

C52FUPAH

Hearing

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 ANU UPADHYAY,

4 Plaintiff,

5 v.

1- CV 8462 (NRB)

6 NEERAJ SETHI, et al,

7 Defendants.  
8 -----x

9 New York, N.Y.  
10 May 1, 2012  
10:00 a.m.

11 Before:

12 HON. NAOMI REICE BUCHWALD,

13 District Judge

14 APPEARANCES

15 GLADSTEIN, REIF & MEGINNISS, LLP  
16 Attorneys for Plaintiff  
AMELIA TUMINARO, ESQ.

17 PROSKAUR ROSE LLP  
18 Attorneys for Defendants  
JOSHUA F. ALLOY, ESQ.  
KATHLEEN McKENNA, ESQ.

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1 (Hearing resumed)

2 THE COURT: Before we begin, can we just talk a little  
3 scheduling? So first Mr. Alloy, how much more do you have with  
4 the plaintiff?

5 MR. ALLOY: Your Honor, I would say approximately 30  
6 minutes.

7 MS. TUMARINO: In terms of redirect, I don't think I  
8 have very much. I have maybe a handful, maybe ten questions.  
9 I don't know how long that will take.

10 THE COURT: All right, so why don't we just finish up  
11 with the plaintiff, then.

12 MS. TUMARINO: Before we start, could I just raise a  
13 few preliminary issues? One is that the Court requested that I  
14 copy the Defendant's Exhibits 23 and 24 yesterday, which I've  
15 done and I have copies for the Court and I've provided them  
16 already to defendant's counsel.

17 THE COURT: Okay.

18 MS. TUMARINO: If you'd like me to bring them up, I'm  
19 happy to do that.

20 The other thing is that my -- the plaintiff's second  
21 witness, Nahar Alam, is unavailable today she's possibly  
22 available by video conference. She thought that she would be  
23 available that way. I was unable to get in touch with her,  
24 however, this morning about what her availability is in terms  
25 of what time and whether she has the video conferencing at her

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1 work. So that's another issue in terms of finishing  
2 plaintiff's case this morning.

3 THE COURT: It sounds like we'll just have to take her  
4 out of turn, but I'm not sure whether it just will be easier to  
5 have her come in live on another day that works for everybody  
6 instead of struggling to get video conferencing facilities up.  
7 Because we're not automatically wired for that kind of stuff.

8 MS. TUMARINO: I understand. And one last thing, this  
9 morning when plaintiff came to my office she brought a handful  
10 of papers wrapped in a rubber band that she says have phone  
11 numbers and addresses. I have not had the opportunity to  
12 review them at all. I haven't had the opportunity to review  
13 them with plaintiff, so certainly I don't know whether any of  
14 those are responsive to any requests that have been made by  
15 defendants. This is the first I'm learning of their existence.  
16 So I'm happy at some point to review them and provide them if  
17 defendants so desire, but I wanted to bring that to the  
18 attention of the Court.

19 THE COURT: Let me go back just and ask a question.  
20 Was there a discovery request from the defendants addressed to  
21 the plaintiff seeking all information about her earnings over  
22 the time period at issue in this case?

23 MR. ALLOY: Yes, your Honor. We had a request for  
24 "all documents concerning your massage business, including but  
25 not limited to advertisements and documents reflecting names,

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1 addresses, phone numbers or other information of your massage  
2 clients."

3 THE COURT: Could you explain to me, Ms. Tumanaro, how  
4 the diaries from yesterday and possibly the other pages were  
5 not obtained by your firm from Ms. Upadhyay?

6 MS. TUMARINO: Well, your Honor, we made an objection  
7 to that request on the grounds of relevance and that it wasn't  
8 reasonably calculated to lead to the discovery of admissible  
9 evidence and it was overly broad and we produced the only  
10 document that was given to us by plaintiff.

11 THE COURT: Your job, particularly when you're dealing  
12 with someone who you're asserting is uneducated and unfamiliar  
13 with the court process, is to spend extra time explaining what  
14 her obligations are under the Federal Rules.

15 MS. TUMARINO: That's absolutely true, and we have  
16 spent a tremendous amount of time with plaintiff, asking her  
17 for all sorts of documents. I don't think she understood that  
18 these were -- I don't think she grasped that these were  
19 documents or that they pertain to anything. They're in her  
20 view --

21 THE COURT: I recall someplace in the materials I've  
22 read on this case a reference to diaries and those diaries  
23 contained, as I recall, phone numbers of massage clients. So  
24 if I recall that being in the papers how could it be that you  
25 could not have had a discussion with her saying I need to see

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1 all your diaries?

2 MS. TUMARINO: I don't recall what you're referring  
3 to, your Honor.

4 THE COURT: I don't -- Andrew, am I imagining this?

5 THE DEPUTY CLERK: I don't remember it.

6 THE COURT: You don't remember it?

7 MS. TUMARINO: I'm sorry. This doesn't sound familiar  
8 to me at all.

9 THE COURT: Maybe I'm wrong.

10 MS. TUMARINO: But notwithstanding that, these diaries  
11 appear to be records, to the extent they're even records,  
12 they're numbers, but kept after the time that she was employed  
13 by defendant and aren't relevant to the times, to the question  
14 of tolling.

15 MR. ALLOY: I mean, your Honor, she testified she had  
16 other diaries prior to this, many diaries.

17 THE COURT: I thought I remembered something in the  
18 papers. Well, all I could say is you should review them. You  
19 should produce them if they're responsive and if we need to  
20 we'll call Ms. Upadhyay back for additional testimony.

21 MS. TUMARINO: Yes, your Honor. Thank you.

22 THE COURT: Okay. Can you ask Ms. Upadhyay to come  
23 back to the witness stand?

24 ANU UPADHYAY,

25 called as a witness by the Plaintiff,

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1           having been previously duly sworn, testified as follows:

2           THE COURT: Mr. Alloy.

3           MR. ALLOY: Thank you.

4           CROSS-EXAMINATION

5           BY MR. ALLOY:

6           Q. Good morning, Ms. Upadhyay. You understand that you are  
7           still under oath today with the same rules apply that we  
8           discussed yesterday?

9           A. Yes.

10          Q. Thank you. When you worked for Shikha and Ganesh in New  
11          York after they returned from Virginia you were able to conduct  
12          your massage business in New York City, correct?

13          MS. TUMARINO: I'll object as to relevance.

14          THE COURT: Overruled.

15          A. Yes.

16          Q. And you performed massages in the evening, correct?

17          MS. TUMARINO: I object as to relevance.

18          A. Yes.

19          THE COURT: Overruled.

20          Q. And you would leave every evening around 7:00 p.m. to do  
21          your massage work, correct?

22          MS. TUMARINO: Again, I reiterate the objection.

23          A. Yes.

24          Q. And you performed massages on weekends, correct?

25          A. Yes.

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Upadhyay - cross

1 Q. And you performed these massages in Manhattan?

2 MS. TUMARINO: Maybe I could just have a --

3 Q. And in Queens and in New Jersey, correct?

4 MS. TUMARINO: If I could just have a standing  
5 objection, your Honor?

6 THE COURT: Okay.

7 A. Anybody called me anywhere, I would go there.

8 Q. And you also performed massages in the mornings when the  
9 children were in school, correct?

10 A. No.

11 Q. And during the time when you worked for Shikha and Ganesh  
12 you had your own cell phone, right?

13 MS. TUMARINO: Objection as to relevance.

14 THE COURT: Overruled.

15 A. Yes.

16 Q. Berry and Ronica gave you the cell phone, correct?

17 A. Yes.

18 Q. And they added your cell phone to their cell phone plan,  
19 correct?

20 A. I don't know about this. I got a phone. That is all.

21 Q. And you used your phone to help set up your massage  
22 appointments, correct?

23 MS. TUMARINO: Again, a standing objection, relevance.

24 A. Yes.

25 Q. And you made phone calls from your cell phone, correct?

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1 A. Yes.

2 Q. And you received phone calls on your cell phone, correct?

3 A. Yes.

4 Q. And on the weekends you didn't sleep at Shikha and Ganesh's  
5 apartment in New York City, correct?

6 A. No, I used to stay.

7 Q. You stayed at a room in Queens also, correct?

8 A. No. I used to stay in their house only.

9 Q. So you spent every single weekend in New York City at  
10 Shikha and Ganesh's?

11 A. Yes. I used to come and sleep in the night. In the  
12 morning I used to go for a massage.

13 Q. You recently had a hip operation, I believe you testified,  
14 is that correct?

15 MS. TUMARINO: Objection. I'm not sure she testified  
16 about that. That was something that I mentioned in the context  
17 of the -- when the affidavit was signed.

18 MR. ALLOY: I'll rephrase.

19 Q. You recently had a hip operation, correct?

20 A. Yes. It's been six months.

21 Q. How do you know it's been six months since your hip  
22 operation?

23 A. Because it was told to me, the doctor told me that it's  
24 been six months.

25 Q. And you paid for your medical care through Medicaid,



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1 correct?

2 MS. TUMARINO: Objection as to relevance.

3 THE COURT: I'll allow it.

4 MS. TUMARINO: And I'd like to also object as to  
5 foundation.

6 MR. ALLOY: It's cross.

7 THE COURT: Apparently there was a foundation, since  
8 she said yes.

9 MR. ALLOY: I will establish relevance very shortly.

10 THE INTERPRETER: The response was yes.

11 MR. ALLOY: Thank you.

12 Q. And several years ago you were sick, you were diagnosed  
13 with rheumatoid arthritis, correct?

14 A. Yes.

15 MS. TUMARINO: Standing objection to relevance.

16 THE COURT: All right.

17 Q. When you were diagnosed with rheumatoid arthritis you went  
18 to see a doctor in Jackson Heights, correct?

19 A. Yes.

20 Q. Dr. Georgescu, correct?

21 A. Yes.

22 Q. And you found Dr. Georgescu on your own, correct?

23 A. Shikha found him for me.

24 Q. And when did Shikha find Dr. Georgescu for you?

25 A. I don't remember when she found him.

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1 Q. But you were living with Shikha in New York City, correct?

2 A. Yes.

3 Q. Why would she find you a doctor in Jackson Heights?

4 A. I was ill, I had trouble. She found him and then she went  
5 with me.

6 Q. But why didn't she find you a doctor in Manhattan?

7 A. I don't know now. They must know. I don't know. Because  
8 she wanted a Hindi doctor, because of that.

9 Q. Well, Dr. Georgescu is not Indian, correct?

10 A. Yes, that is, Dr. Badlani is my doctor. First we had went  
11 to Dr. Badlani, that also Shikha had found and given.

12 THE COURT: Could you answer the question, which was,  
13 "Dr. Georgescu is not Indian, is he?"

14 A. I don't know about this.

15 Q. Well, he is white, correct?

16 A. Yes.

17 Q. So he's not Hindi, is he? He's not Indian, sorry.

18 A. Yes.

19 THE COURT: Yes is not an answer to that.

20 Q. Yes, he's not Indian?

21 A. Yes.

22 Q. And in fact, the reason you visited Dr. Georgescu in Queens  
23 is because when you filled out your Medicaid application you  
24 used an address in Queens, correct?

25 A. I didn't give an address in Queens. Why would I give an

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1 address in Queens?

2 Q. So you did not write down on your Medicaid application that  
3 you were living in an address in Queens?

4 A. No.

5 Q. And the reason you had to see a doctor in Queens was not  
6 because Medicaid required you to visit a doctor in Queens  
7 because that was where your home address was?

8 A. Shikha found him. I don't know about all this. I don't  
9 even remember.

10 Q. Well, you remember when you filled out your Medicaid  
11 application, you had to put down what your income was, correct?

12 A. No.

13 Q. And in fact, you wrote down that you only earned \$100 a  
14 week in order to qualify for Medicaid, correct?

15 A. Yes.

16 Q. And when Shikha saw a copy of your Medicaid application,  
17 she was very upset with you, wasn't she?

18 A. No.

19 Q. Shikha told you when she saw your Medicaid application that  
20 what you were doing was fraudulent, didn't she?

21 A. No.

22 Q. Do you remember showing your Medicaid application to  
23 Shikha?

24 A. Yes.

25 Q. You testified yesterday about Shaku. Shaku was a part of

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1 Andolan, correct?

2 A. Yes.

3 Q. Shaku was very involved with Andolan, correct?

4 A. She must have been doing it. I don't know much about this.

5 Q. In fact, Shaku tried to get you involved in Andolan,  
6 correct?

7 A. No.

8 Q. Well, when you began living in the same apartment building  
9 with Shaku, you were friendly with her, correct?

10 A. Sometimes when I met her then we would talk.

11 Q. And you would socialize with Shaku?

12 A. If I met her then I would talk only.

13 Q. And you complained to Shaku about your belief that you were  
14 not paid all your wages, correct?

15 A. I didn't speak to Shaku.

16 MS. McKENNA: I didn't hear you.

17 MR. ALLOY: I didn't speak to Shaku.

18 Q. You knew that Shaku was involved in Andolan and you knew  
19 that Shaku had filed a lawsuit against her former employer, but  
20 you never spoke to her about your complaint?

21 A. No. I only spoke to her once. That's all.

22 MR. N. SETHI: There's one translation, not about the  
23 case, it's about her wages.

24 THE INTERPRETER: He said about the complaint.

25 MR. ALLOY: Her complaint --

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1 MS. McKENNA: Let's rephrase it. Let's reask it.

2 MR. ALLOY: Right.

3 Q. By complaint I did not mean the formal complaint, I meant  
4 her, Anu's complaint about her belief that she had not been  
5 paid wages, so I will rephrase the question.

6 So you knew that Shaku was involved in Andolan and you  
7 knew that Shaku had filed a lawsuit against the Chellarams, but  
8 you never --

9 MS. McKENNA: One at a time.

10 THE COURT: You have to break it up or you don't  
11 get --

12 Q. You knew that Shaku was involved in Andolan, correct?

13 A. Yes.

14 THE COURT: Okay, next clause.

15 Q. And you knew that Shaku had filed a lawsuit against the  
16 Chellarams, correct?

17 A. Yes, I knew.

18 Q. And you lived just one floor apart from Shaku, correct?

19 A. Yes.

20 Q. But you never discussed with Shaku your belief that you had  
21 not been paid all of your wages?

22 MS. TUMARINO: I'm going to object as to form. Can we  
23 have a time frame here?

24 THE COURT: Never is the time frame.

25 A. I didn't speak to Shaku.

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1 Q. Instead, you complained to one of your massage clients, is  
2 that right?

3 A. Yes.

4 Q. I'm sorry, the answer is yes? So you want the Court to  
5 believe that you told a massage client about your complaint  
6 about the Sethis but not Shaku, is that right?

7 A. I didn't speak to Shaku.

8 MS. McKENNA: Move to strike, your Honor. Not  
9 responsive.

10 THE COURT: A responsive answer would just have been  
11 yes.

12 MS. McKENNA: Right.

13 THE COURT: But it's argument anyway.

14 MS. McKENNA: Okay.

15 Q. In one of the affidavits you submitted to this Court you  
16 made a number of statements about the time that you were  
17 working for Ronica and Berry and two women from a workers  
18 rights organization visited you at their apartment, correct?

19 A. Yes.

20 Q. In your affidavit to the Court you did not identify either  
21 of the two women, correct?

22 A. No, I didn't know them. I didn't have any knowledge.

23 Q. Nahar Alam was not one of the two women who came to the  
24 Sethis' apartment that day, correct?

25 A. Nahar had come. Nahar and one other lady, two people had

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1 come.

2 Q. Well, when you signed your affidavit approximately one year  
3 ago, you knew who Nahar Alam was, correct?

4 A. Yes.

5 Q. And her name and phone number are in your 2008 diary,  
6 correct?

7 A. Yes.

8 Q. And she helped you get involved in the documentary film  
9 that you appeared in, correct?

10 A. What film?

11 THE COURT: The film we were talking about yesterday.

12 A. Yes.

13 Q. And you attended a family gathering of Ms. Alam's many  
14 years ago, correct?

15 A. Yes.

16 MS. TUMARINO: I'm going to object. She hasn't  
17 testified about any of this. Foundation.

18 MS. McKENNA: Cross-examination.

19 MR. ALLOY: It's cross-examination.

20 THE COURT: It's cross-examination.

21 MS. McKENNA: Did we get an answer?

22 THE INTERPRETER: Yes. I said yes.

23 MS. McKENNA: Thank you.

24 Q. In your most recent affidavit that you submitted to the  
25 Court just a few weeks ago, you stated that you bumped into

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1 Ms. Alam on the street in 2009, correct?

2 A. Yes.

3 Q. But in none of the affidavits you've submitted to the Court  
4 today -- strike that.

5 You have not identified Ms. Alam as one of -- strike  
6 that.

7 In your most recent affidavit in which you discuss  
8 Ms. Alam, you still did not identify her as one of the two  
9 women who visited the Sethis' apartment.

10 A. Two people came.

11 MS. McKENNA: Move to strike.

12 THE COURT: I think that what you want to ask her is  
13 at no time in any of your affidavits did you identify Ms. Alam  
14 as one of the people who came to the Sethis' apartment.

15 MR. ALLOY: Yes, thank you.

16 THE COURT: Could you --

17 A. Because I didn't know the names of people.

18 Q. But you just testified that you know Ms. Alam. Correct?

19 A. Yes, we know each other. It's now that we have done that.  
20 Before we didn't used to meet.

21 Q. Well, at the time you submitted or your counsel submitted  
22 three different affidavits from you, you knew Ms. Alam's name,  
23 correct?

24 A. Yes.

25 Q. So did you just forget that Ms. Alam was one of those two



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1 women who visited the Sethis' apartment?

2 A. Yes, I had forgotten.

3 Q. And you only just remembered a few minutes ago; is that  
4 your testimony?

5 A. Remembered what?

6 Q. Remembered that Ms. Alam was one of the two women who  
7 visited the Sethis' apartment earlier in your employment for  
8 them.

9 A. Yes, two women had come. They spoke and then they went  
10 away.

11 Q. That was not my question. My question was, did you only  
12 just remember five minutes ago that Ms. Alam was one of those  
13 two women?

14 A. At that time I didn't know by name, but now I know.

15 Q. When you say at that time, you're talking about when she  
16 visited, correct?

17 A. Yes, she came. Ronica called her and she came.

18 Q. I'm asking you, two weeks ago when you submitted an  
19 affidavit to the Court -- I'm sorry. Two weeks ago when you  
20 submitted an affidavit to the Court, did you not remember that  
21 Ms. Alam was one of the women who visited you?

22 A. At that time I didn't know. The two women had come, that's  
23 all. They came. Later I came to know.

24 THE INTERPRETER: I missed something?

25 MS. S. SETHI: It's not that you missed. She keeps

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1 saying at that time. That is not a specific phrase. You're  
2 not asking her specifically. The question is not at that time  
3 in 1999.

4 THE INTERPRETER: I asked her (Hindi).

5 MR. N. SETHI: She's not answering specifically to the  
6 time line.

7 THE INTERPRETER: Should I repeat that?

8 MS. S. SETHI: Two weeks did she know.

9 THE WITNESS: Yes.

10 THE COURT: When this lawsuit was filed, at that time  
11 did you know the name of at least one of the women that came to  
12 the Sethis' apartment from Andolan?

13 THE INTERPRETER: At that time when I went, then only  
14 I knew, so I said at what time, she said when I went to ask for  
15 help.

16 THE COURT: Could you just listen to the question,  
17 which is at the time you filed this lawsuit did you know the  
18 name of one of the two women who came to the Sethis' apartment?

19 THE WITNESS: Yes.

20 MS. McKENNA: Hallelujah.

21 Q. Before you started working for Shikha and Ganesh you spoke  
22 to them on the phone and they agreed to pay you \$1,400 per  
23 month, correct?

24 A. Yes.

25 Q. And at some point they began paying you \$1,600 per month,

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1 correct?

2 A. When we went to North Carolina, at that time they had  
3 spoken about 1400. Then when we came to Manhattan, then they  
4 spoke about 2,000 per month they would give me.

5 Q. Okay, so your salary was raised by Shikha and Ganesh,  
6 correct?

7 A. Yes.

8 Q. And in fact, you had conversations with Shikha and Ganesh  
9 about your salary, correct?

10 A. Yes.

11 Q. In fact --

12 A. On the phone. On the phone.

13 Q. Well, after you started working for Shikha and Ganesh, you  
14 also had conversations with them about your salary, correct?

15 A. No.

16 Q. In fact, you asked for arrays, correct?

17 A. No. Because previously only they had told me that when we  
18 come to Manhattan we'll give you 2,000. Now we'll give you  
19 1400 per month.

20 Q. So it's your testimony that they raised your salary simply  
21 out of generosity and not out of a discussion with you?

22 A. I didn't speak about salary because they knew about it and  
23 they had increased my salary.

24 Q. Isn't it in fact true that they increased your salary in  
25 part because you threatened to stop working for them?

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1 A. Aiiyyo, no.

2 THE COURT: I'm sorry, "I don't know"?

3 THE INTERPRETER: "Aiiyyo" is an expression of alarm.

4 MS. McKENNA: I'm sorry, what's the expression?

5 THE INTERPRETER: Aiiyyo is an expression of alarm,  
6 a-i-y-y-o.

7 MS. S. SETHI: It's like, "Oh, no."

8 MS. McKENNA: Thank you.

9 THE COURT: Just to be clear, you never asked Shikha  
10 and Ganesh or either of them to raise your salary?

11 THE WITNESS: I never asked.

12 THE COURT: So each time they raised your salary, they  
13 just volunteered to do so?

14 THE WITNESS: No. It's because I was taking care of  
15 two children on my own. In the morning they would leave at  
16 seven and in the evening they would come at seven, and I did  
17 everything, I took care of the children, I did all the cooking  
18 in that house and the taking care of the house and that's why  
19 they increased my salary, not because their heart was big.

20 THE COURT: But didn't they have two children when you  
21 went to work for them?

22 THE WITNESS: Yes, I used to take care of two  
23 children.

24 THE COURT: So all the time or within a few weeks of  
25 the time you went to work for Shikha and Ganesh they had two

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1 children, correct?

2 THE WITNESS: Yes.

3 THE COURT: And from the beginning of the time that  
4 you went to work for them it was also your job to take care of  
5 the house, correct?

6 THE WITNESS: Yes.

7 THE COURT: And during the time that you worked for  
8 them all the time, it was your job to cook as well, isn't that  
9 correct?

10 THE WITNESS: Yes.

11 THE COURT: How many times did Shikha and Ganesh raise  
12 your salary?

13 THE WITNESS: I don't know about this. In North  
14 Carolina at that time before going there we had spoken, and  
15 they had told me that now we'll give this much and then when we  
16 go to Manhattan we'll increase it to 2,000, so I never spoke to  
17 them about my salary because they knew that they were going to  
18 raise it.

19 MS. TUMARINO: I'm sorry, could you read the answer  
20 back?

21 THE COURT: So is your testimony that your salary was  
22 either \$1,400 or \$2,000 a month throughout the time that you  
23 worked for Shikha and Ganesh?

24 THE WITNESS: I didn't see the money, salary. I  
25 didn't see the money. They used to give a check and I used to

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1 go give it. If I've never seen the money, then how will I  
2 know?

3 THE COURT: You saw the checks, did you not?

4 THE WITNESS: Yes, checks only I used to take it and  
5 go.

6 MS. TUMARINO: I'd like the record to reflect that the  
7 checks are from multiple months which don't necessarily  
8 correspond to either of the amounts that plaintiff has  
9 testified to.

10 MS. McKENNA: And don't necessarily correspond to any  
11 of the plaintiff's prior testimony I would also note.

12 BY MR. ALLOY:

13 Q. You can read numbers, correct?

14 A. No, I don't know. I don't know how to look at checks.

15 Q. But you know numbers, correct?

16 A. What number?

17 THE COURT: Any number.

18 A. A, B, C, D numbers I know.

19 Q. 1, 2, 3 numbers you know.

20 A. Yes.

21 Q. And so when you receive a check and it has numbers on it,  
22 you can read those numbers, correct?

23 A. Before I didn't know any numbers. Now I know numbers.

24 Q. And when you sent money on your own to India, you had to  
25 know how much money you were sending, correct?

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1 A. I used to take money -- I used to take money, I used to  
2 take the money and I used to go to Western Union. I used to  
3 say I want to send one lakh rupees and he used to take one lakh  
4 rupees and give the remainder back to me. I didn't know how to  
5 count.

6 Q. Now you know there are numbers on money, is that right?

7 A. Yes. 20, 10, yes, I know all this. It's now that I know  
8 all this. Before I didn't know all this. Shikha and Ronica  
9 used to count it and give it to me my money.

10 Q. So you operated a massage business in which you charged  
11 clients different amounts of money, but you didn't know any of  
12 the values of the bills you were receiving?

13 A. They used to give it to me and I used to put it away. I  
14 didn't count and take it from them.

15 MS. McKENNA: Objection. Non-responsive. Move to  
16 strike.

17 THE COURT: Granted.

18 MS. TUMARINO: She answered the question. He said --

19 MS. McKENNA: It's not a responsive answer.

20 MS. TUMARINO: She's explaining how it is that she got  
21 money when she was paid. He says but you didn't know how much  
22 you were paid and she says they used to give it to me, I put it  
23 away, but I didn't know how much it was. It's totally  
24 responsive to the question.

25 MR. ALLOY: Can you read back the question, please?

C52FUPAH

Upadhyay - cross

1 MS. McKENNA: The Judge has already ruled on the  
2 question.

3 MS. TUMARINO: She ruled without hearing my argument.

4 THE COURT: We'll let it stand. It can stay.

5 MR. ALLOY: Can you repeat the question, please?

6 THE COURT: I'd try another question.

7 BY MR. ALLOY:

8 Q. So you would charge massage clients, some of your massage  
9 clients, \$50, correct?

10 A. Yes.

11 Q. And those were the non-Indian massage clients, you charged  
12 them \$50, correct?

13 A. Yes.

14 Q. And the Indian massage clients you charged \$35, correct?

15 A. Yes, 35 or 40, like this.

16 Q. So when a massage client paid you for your massage, how did  
17 you know that they weren't just giving you one dollar?

18 A. Those people, what money they would give, I would take it  
19 and I would go. I didn't used to count the money. I didn't  
20 know how to count the money. Now I know how to count the  
21 money. At that time I did not know.

22 THE COURT: So when you had a massage client and at  
23 the end of the massage they paid you, it's your testimony that  
24 you left without knowing whether they had paid you properly?  
25 That's a yes or no question.



C52FUPAH

Upadhyay - cross

1 THE WITNESS: Yes. I used to think that they had  
2 given it correctly.

3 THE COURT: But you would travel all the way to Queens  
4 to do a massage and leave the client without being certain that  
5 they had paid you all the money you were owed. Is that your  
6 testimony?

7 THE WITNESS: Yes.

8 Q. And the purpose of all your massage business was so that  
9 you could earn money to send it home to your family in India,  
10 correct?

11 A. Yes.

12 Q. And you earned thousands of dollars through your massage  
13 business, correct?

14 A. Yes.

15 Q. You were very successful at your massage business, correct?

16 A. Yes.

17 Q. It's true that you have signed your name with two N's  
18 before, correct?

19 A. I don't remember that.

20 Q. Well, in fact, you signed your green card application with  
21 two N's, correct?

22 A. I don't remember.

23 MR. ALLOY: What exhibit are we up to?

24 THE DEPUTY CLERK: 26.

25 MR. ALLOY: I'd like to mark as Defendant's Exhibit 26

C52FUPAH

Upadhyay - cross

1 four pages Bates stamped D000162, 163, 168, 170, which I will  
2 represent are pages from, were produced by defendant and are  
3 pages from plaintiff's green card application. Here's a copy.

4 Q. Ms. Upadhyay, the Sethis helped you apply for a green card,  
5 correct?

6 A. Yes.

7 Q. And as part of that application, excuse me, as part of that  
8 process you had to fill out some paperwork, correct?

9 A. They would fill it. I didn't fill anything.

10 Q. You had to sign some paperwork, correct?

11 A. Yes.

12 Q. If you could look at the second page of Exhibit 26? That's  
13 your signature at the bottom of the page, correct?

14 A. It is my signature but I did not write two N's. I don't  
15 remember.

16 THE COURT: Well, if you didn't write two N's, who  
17 wrote two N's, if this is your signature?

18 THE WITNESS: I don't know anything about this,  
19 because in the green card there's only one N.

20 THE COURT: Look at this piece of paper. Did you  
21 write those letters on the second and third and fourth pages of  
22 this Exhibit 26?

23 MS. S. SETHI: Yes or no? It was yes or no.

24 THE INTERPRETER: She says I don't remember. Should I  
25 ask again that's a yes or no question?

C52FUPAH

Upadhyay - cross

1 MS. McKENNA: Yes. It's the judge's question, sorry.

2 THE COURT: What don't you remember?

3 THE WITNESS: These two N's, that sign that I have  
4 done, I don't remember it.

5 THE COURT: That's not the question. The question is  
6 did you write the letters on pages 2, 3 and 4 of this exhibit?

7 THE WITNESS: What can I say? I don't know about the  
8 two N's. I don't know about it, how am I going to say yes or  
9 no?

10 BY MR. ALLOY:

11 Q. Did someone else sign your green card application?

12 A. No. They took me and went. I have done it.

13 THE COURT: You remember signing a green card  
14 application, correct?

15 THE WITNESS: Yes.

16 Q. So you wrote those letters on those pages of Exhibit 26,  
17 correct?

18 THE INTERPRETER: Sign. She's asking about the sign.

19 A. I don't know about the two N's. How could I have written  
20 it? I don't know whether I should say yes or whether I should  
21 say no. I don't understand.

22 MS. TUMARINO: Your Honor, I think it's pretty clear.  
23 She's acknowledging she signed it --

24 THE COURT: No, she's not. That's what I'm trying to  
25 get her to agree.

C52FUPAH

Upadhyay - cross

1 MS. TUMARINO: She's saying she doesn't remember  
2 specifically writing it this way.

3 MS. McKENNA: No, she's saying she can't explain the  
4 fact that her testimony is completely incredible. That's very  
5 plain, your Honor.

6 MS. TUMARINO: Your Honor, she said she remembers  
7 signing a green card application, she doesn't remember signing  
8 it with two N's. She says she did sign it, she just doesn't  
9 remember.

10 MS. McKENNA: That's not what she's saying.

11 THE COURT: You could say in one sentence, "I signed  
12 this although I don't remember writing two N's." She has not  
13 said that.

14 MS. TUMARINO: That would assume a certain familiarity  
15 with this forum.

16 MS. McKENNA: No, it would assume a certain honesty is  
17 actually what it would assume.

18 MS. TUMARINO: Your Honor, she clearly --

19 THE COURT: Look. The bottom line is are you  
20 challenging that she wrote these letters? In other words, we  
21 have it six times.

22 MS. TUMARINO: Your Honor, I'm not challenging it. If  
23 you want to hear what I'd like to say. She clearly used to  
24 write her name with two N's. She's confused because at some  
25 point she stopped --

C52FUPAH

Upadhyay - cross

1 THE COURT: Yesterday she refused to acknowledge the  
2 endorsement on the check with two N's. That's the problem.  
3 It's incredible.

4 MS. TUMARINO: The endorsement on the check with two  
5 N's looks different. She also was unable --

6 MS. McKENNA: That wasn't her explanation.

7 MS. TUMARINO: Well, it wasn't her explanation because  
8 she hadn't been shown this document. She also was unable to  
9 verify her own signature on a document which I've brought the  
10 original of with me today which she signed, your Honor. She's  
11 an illiterate woman who is unfamiliar with writing letters.  
12 She can write some letters but she's nervous, this is her first  
13 experience with the court system. This is a completely  
14 different world for her.

15 THE COURT: You know -- excuse me. I have been a  
16 judge for over 30 years. In the course of that I have had many  
17 uneducated people testify, particularly in the criminal  
18 context. Uneducated people can tell the truth when questions  
19 are broken down for them that can answer them regardless of  
20 their formal education. The excuse that she is uneducated only  
21 goes so far. And it doesn't go as far as refusing to  
22 acknowledge that on her very own personal green card  
23 application she wrote her name six times with two N's because  
24 there is no other possible explanation other than she wrote it,  
25 because there's no reason for anyone else to have written this.

C52FUPAH

Upadhyay - cross

1 There's no -- it defies the imagination to come up with another  
2 explanation. But yet she is reluctant to acknowledge it,  
3 because she is not, maybe not formally educated, but that  
4 doesn't make you unintelligent. And perhaps she has put  
5 together the questions from yesterday and the questions from  
6 today.

7 BY MR. ALLOY:

8 Q. Ms. Upadhyay, you've also signed your actual green card  
9 with two N's, correct?

10 A. I don't know. I don't remember.

11 Q. And you've signed your Social Security card with two N's,  
12 correct?

13 A. One N.

14 MR. ALLOY: I only have one copy, but these I will  
15 show you. I will try to make copies.

16 MS. TUMARINO: She has the more recent green card that  
17 I think, I would be most comfortable checking before you do  
18 that. That one's expired.

19 MR. ALLOY: Let me clarify.

20 Q. You've had more than one green card, correct?

21 A. I don't have old green cards, I just have the one.

22 Q. You have your most recent green card but your green card  
23 expires and you have to get a new one every few years, correct?

24 A. I don't know about this.

25 Q. Well, you had a green card in 2002 and 2003 that you signed

C52FUPAH

Upadhyay - cross

1 with two N's, correct?

2 I apologize. I have been referring to this as a green  
3 card. Let me -- this is the only copy I have, I apologize.

4 THE INTERPRETER: Her response is I only have one  
5 green card, it has just come recently.

6 MR. ALLOY: I'm going to clarify.

7 Q. You have also what's called a workers authorization card,  
8 correct?

9 A. With me I don't have any other card.

10 Q. Not with you here. Previously you have had what's called a  
11 workers authorization card, correct?

12 A. I don't know.

13 THE COURT: Show it to her. Does this refresh your  
14 recollection.

15 Q. Okay, let me refresh your recollection. I'm going to show  
16 you what's been marked as Defendant's Exhibit 27. Do you  
17 recognize that card?

18 A. Yes. I recognize it.

19 Q. And that's your picture on the card, correct?

20 A. Yes.

21 Q. And this is an official document of the United States that  
22 allows you to work in the United States, correct?

23 A. Yes.

24 Q. And that's your signature on the card, correct?

25 A. Yes. That is my signature. How I could have written three

C52FUPAH

Upadhyay - cross

1 N's? That's what I cannot remember.

2 Q. I'm sorry, did you say three N's?

3 THE INTERPRETER: She said three N's.

4 She says no, these two N's, I don't know. I have put  
5 it -- I don't remember. I don't remember anything.

6 THE COURT: Is there any question, any doubt in your  
7 mind that you -- that that is your handwriting on the card?

8 THE WITNESS: Because Ronica took me, and when she  
9 took me and went to the office I only signed the document. I  
10 can remember this much. Now I have to say yes only. Yes.

11 THE COURT: Yes -- let me be sure. Yes, I wrote my  
12 name on that card.

13 THE WITNESS: Yes. Yes, I had signed this card.  
14 Ronica had taken me and gone and I had signed this. Now, about  
15 these two N's I don't know, but I'm going to say yes.

16 THE COURT: We're going to do it one more time. Try  
17 to just answer my question. Is there any doubt that you wrote  
18 the handwriting on that card? Answer my question yes or no.

19 THE WITNESS: I have, I have doubt that it is, I have  
20 doubt that it is not my signature.

21 THE COURT: Okay, that's a double negative.

22 MS. McKENNA: She's shrewd enough to know that, too.

23 THE INTERPRETER: Could we just -- is it --

24 THE COURT: I'll ask it another way.

25 MS. TUMARINO: Why don't you just ask her if she



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Upadhyay - cross

1 thinks it's her signature.

2 THE COURT: Did you write the handwriting on that  
3 card, yes or no?

4 THE WITNESS: Because at that time I did not know how  
5 to write so clearly.

6 THE COURT: Let me understand. You are saying you did  
7 not write the handwriting on that card?

8 THE WITNESS: I have not done this signature.

9 THE COURT: Show her the next one.

10 BY MR. ALLOY:

11 Q. I'm going to refresh your recollection with Defendant's  
12 Exhibit 28. Do you recognize that Social Security card?

13 A. Yes.

14 Q. That is your Social Security card, correct?

15 A. Yes.

16 Q. And the signature at the bottom of the Social Security  
17 card, that is your signature, correct?

18 A. This is not mine. I remember with this Ronica had written  
19 it. Ronica had written it. She had signed this. I didn't  
20 know how to do it. Now looking at this I remember.

21 Q. So it's your testimony that you did not sign your own  
22 Social Security card?

23 A. I didn't do it. She filled the paper and she only did it.  
24 Because at that time I did not know how to sign.

25 MS. McKENNA: Your Honor, while my colleagues are

C52FUPAH

Upadhyay - cross

1 conferring, I know we didn't have a jury trial so these  
2 exhibits haven't been officially moved in, all the exhibits  
3 from yesterday and today, but I assume they're in.

4 THE COURT: You can move them in unless there's an  
5 objection to any of the ones that have been referenced so far.

6 MS. TUMARINO: I have to go through it. I don't want  
7 to concede their admissibility without looking at them since  
8 they weren't moved. I haven't made a specific list as to which  
9 ones are pending, but I'm happy to do that on a break.

10 THE COURT: Okay. If I don't hear from you, I'm going  
11 to assume that they're in evidence.

12 MS. McKENNA: Thank you.

13 MS. TUMARINO: Your Honor, yesterday, you had asked if  
14 I had the original copy of the declaration and I've brought it  
15 with me today.

16 BY MR. ALLOY:

17 Q. Ms. Upadhyay, you remember -- you applied -- after you  
18 arrived in the United States, several years after you were in  
19 the United States, you applied for an Indian passport, correct?

20 MS. TUMARINO: I object as to relevance.

21 A. Yes.

22 THE COURT: Overruled.

23 Q. And you signed your passport with two N's, correct?

24 A. Ronica put it on another piece of paper and then I was  
25 doing it slowly and then she said don't do it so slowly and

C52FUPAH

Upadhyay - cross

1 then she did it.

2 Q. So it's your testimony you did not sign your own passport?

3 A. This much I don't have in my mind. I don't remember. I  
4 only remember that she had written it on a piece of paper and I  
5 didn't know at that time how to do it. Now whether I've put it  
6 or not put it, what happened or not happened I don't know.

7 Q. And in fact, you've had more than one Indian passport,  
8 correct?

9 A. I have two. There are two, sorry.

10 Q. And your most recent Indian passport which you signed in  
11 2005 also had two N's in your signature, correct?

12 A. There must be. I must have put it. I don't remember this  
13 much. I don't remember about two N's, but even then, yes.

14 MR. ALLOY: Defendant's Exhibit 9, I'm showing  
15 Defendant's Exhibit 9 the last page Bates marked D000153 which  
16 is a copy of Ms. Upadhyay's 2005 India passport. I'm sorry,  
17 the second to the last page.

18 THE INTERPRETER: I have it.

19 Q. Is that a copy of your passport, Ms. Upadhyay?

20 A. Yes.

21 Q. And I know it's hard to make out, but that's your signature  
22 on the passport, correct?

23 A. Yes.

24 Q. And there are two N's in your signature on your passport,  
25 correct?

C52FUPAH

Upadhyay - cross

1 A. I don't remember about two N's. If they are there, they're  
2 there. I must have put it.

3 THE INTERPRETER: Sorry, she's looking at the green  
4 card, so I'm going to flip it.

5 Q. You can see that there are two N's in your signature,  
6 correct?

7 A. Yes.

8 Q. And that's your signature, correct?

9 A. Yes.

10 Q. So in fact, you do sign your name with two N's on occasion,  
11 correct?

12 A. I don't remember. I only remember one. I don't remember  
13 two.

14 Q. Ms. Upadhyay, after you received your green card you  
15 planned your first trip back to India since you had come to the  
16 United States, correct?

17 A. Yes.

18 Q. And I'm sure that was a very important trip for you,  
19 correct?

20 A. Yes.

21 Q. You hadn't seen your children in a long time, correct?

22 A. Yes.

23 Q. And you also hadn't met some of your grandchildren or maybe  
24 all of your grandchildren, correct?

25 A. Yes.

C52FUPAH

Upadhyay - cross

1 Q. And you brought a lot of gifts home for all of your family,  
2 correct?

3 A. Yes.

4 Q. And you bought those gifts yourself, correct?

5 A. Yes.

6 Q. You bought a lot of gold jewelry for your family, correct?

7 A. Two bangles for one girl, two bangles for one girl, for my  
8 daughter in law two, for four people I bought two bangles each.

9 Q. And you also bought a number of very expensive watches,  
10 correct?

11 MS. TUMARINO: Your Honor, I'm going to object as to  
12 relevance.

13 THE COURT: I'll let it go for a while.

14 A. They were not expensive. Ten, ten dollars, you get it in  
15 the street.

16 Q. In fact, weren't the watches Rado watches, Ms. Upadhyay?

17 A. For one son I bought an expensive one, a Rado one. For the  
18 other son I bought a slightly less expensive one, for the  
19 others --

20 MS. S. SETHI: She also said her husband got a Rado.

21 THE INTERPRETER: Official correction. She bought one  
22 Rado for her older son who goes in the office so for that, for  
23 her younger son she bought a slightly less expensive one and  
24 for the rest of the people to give them she bought the ones  
25 that you get on the street.

C52FUPAH

Upadhyay - cross

1 Q. You also brought a lot of cash back to give out to your  
2 family, correct?

3 A. You can't take and go so much money, so I didn't take so  
4 much money. I took 5,000 and went. Everybody told me that if  
5 you take money like this you will get caught, so for everybody  
6 I bought gifts.

7 Q. Well, in fact the limit that you can bring is \$10,000,  
8 correct?

9 MS. TUMARINO: Your Honor, I'm just going to object  
10 again as to relevance.

11 MS. McKENNA: Wait. There was an answer.

12 THE INTERPRETER: She responded. She said I don't  
13 know I took 5,000 and went. Each time I take 5,000 and go.

14 Q. In fact, the first time you went to India, Shikha and  
15 Ganesh gave you \$10,500 in cash, correct?

16 THE INTERPRETER: In dollars?

17 MR. ALLOY: Yes.

18 A. No, they didn't give it.

19 Q. In fact, the \$10,500 they gave you included your last two  
20 months of wages, correct?

21 A. No. Whatever I took in went, I took my massage money and  
22 went.

23 Q. Well, in fact, they also gave you part of that, part of the  
24 \$10,500 they gave you was \$6,000 that came from your own bank  
25 account, correct?

C52FUPAH

Upadhyay - cross

1 A. The 40,000 that they sent, is it that?

2 Q. No. Before you went to India for the first time.

3 A. My bank money I never took out.

4 Q. Well, in fact, you traveled to New Jersey shortly before  
5 you went to India to visit with Berry and Ronica, correct?

6 A. Yes, I went to meet them.

7 Q. And you asked them to take money out of your bank account,  
8 correct?

9 A. No.

10 Q. In fact, the bank was closed that day, correct? So you  
11 asked them to send money to Shikha and Ganesh?

12 A. No.

13 Q. So it's your testimony that Shikha and Ganesh did not give  
14 you any money prior to your trip to India? I'm sorry, shortly  
15 before your trip to India?

16 THE INTERPRETER: Your first trip to India.

17 A. Money, nothing. From my pay, my salary, nothing, nothing  
18 at all. When I went to India I had taken old clothes and gone.  
19 They know that.

20 MR. ALLOY: I have no further questions at this time,  
21 your Honor. I would like to reserve or to the extent that  
22 additional documents are produced, I think you had referenced  
23 previously that the witness could be made available again for  
24 further cross-examination, but I have nothing further at this  
25 time.

C52FUPAH

Upadhyay - cross

1 THE COURT: Okay. Why don't we take five minutes, all  
2 right?

3 MS. TUMARINO: I'm going to need a few more minutes  
4 than that. And, your Honor, I have the original declaration  
5 which I brought in. That's obviously the original. You're  
6 welcome to keep it, but it's the only original I have.

7 THE COURT: You can keep it. I wasn't questioning  
8 your bona fides.

9 MS. TUMARINO: You just asked yesterday if I had the  
10 original and I wanted to bring it in so you can see it.

11 THE COURT: Well, you've shown it to the other side.  
12 I'm not going to keep it.

13 (Recess)

14 THE COURT: Ms. Tumanaro. Would you conduct redirect?  
15 Is it part of the record when the plaintiff got the  
16 green card? Is that in the record?

17 MR. ALLOY: I don't --

18 THE COURT: Okay. Don't worry about it. If that was  
19 something you knew off a the top of your head.

20 MR. ALLOY: I can tell you, it was December of '06.

21 MS. TUMARINO: I'm sorry?

22 MS. McKENNA: December of 2006.

23 THE COURT: Does that sound right to you?

24 MS. TUMARINO: It does sound right. What are you  
25 getting that from?



C52FUPAH

Upadhyay - cross

1 MR. ALLOY: We're not.

2 MS. McKENNA: We have great memories.

3 DIRECT EXAMINATION

4 BY MS. TUMARINO:

5 Q. Ms. Upadhyay, yesterday you testified about money in your  
6 U.S. bank account being transferred to your Indian bank  
7 account. Do you recall that?

8 A. Transfer that I had done, 40,000?

9 Q. Yesterday, yes, you spoke about that 40,000 transferred  
10 from your American bank account to the Indian bank account. Do  
11 you remember that?

12 A. Yes.

13 Q. Who arranged for that money to be transferred?

14 A. Ronica.

15 THE COURT: Are we talking, just for my clarification,  
16 Chase to Citibank?

17 MS. TUMARINO: Yes. In April of 2008.

18 I'm going to have the witness look at Defendant's  
19 Exhibit 24. I'll bring a copy of the written pages up to the  
20 court. I think that it doesn't look like the cover of this  
21 document was copied.

22 THE COURT: Maybe we can help you out.

23 MS. TUMARINO: And the cover of the other document it  
24 looks like that wasn't copied also. I assume you would want  
25 that?

C52FUPAH

Upadhyay - redirect

1 THE COURT: Yes, it would be helpful.

2 Q. I'm going to show the witness what's been marked as Exhibit  
3 24?

4 MS. McKENNA: You've given her the 2012?

5 MS. TUMARINO: Yes.

6 MS. McKENNA: It wasn't marked. I just wanted to mark  
7 them.

8 MS. TUMARINO: We're missing a cover. That's our  
9 problem.

10 MS. McKENNA: This is 24?

11 MS. TUMARINO: Yes.

12 MS. McKENNA: Thank you.

13 MS. TUMARINO: And this is 23. We'll get the Court a  
14 cover.

15 Q. This is the current diary that you use, correct?

16 A. Yes.

17 Q. When did you first get this diary?

18 A. It's been one or two months.

19 MS. TUMARINO: If the witness could be shown what's  
20 been marked as Defendant's Exhibit 23.

21 Q. Until you got the other diary that I just showed you, is  
22 this the diary that you used?

23 MS. McKENNA: Objection to form.

24 THE COURT: I note the problem. Let's see if we get a  
25 coherent response.

C52FUPAH

Upadhyay - redirect

1 MS. TUMARINO: Maybe I can rephrase slightly.

2 Q. You just stated that you've only had the diary I showed you  
3 a moment ago for one or two months, correct?

4 A. Two months, three months, like this it was. I don't  
5 remember when I took it and brought it.

6 Q. But before you got that new diary, is the diary that is  
7 being shown to you right now, Defendant's Exhibit 23, the diary  
8 you used?

9 A. Yes.

10 Q. Do you remember when Nahar Alam wrote her number in your  
11 diary?

12 A. It's been at least 15 days when we met then she wrote it.

13 MS. McKENNA: Could I hear the answer back, I'm sorry?  
14 (Record read)

15 MS. McKENNA: Thank you.  
16 (Pause)

17 MS. McKENNA: Are you looking for the date?

18 MS. TUMARINO: Yes.

19 MS. McKENNA: April 7th.

20 Q. Ms. Upadhyay, you testified that you complained to massage  
21 clients that the defendants had not paid you wages, correct?

22 A. Yes.

23 Q. And that massage client helped you, correct?

24 MS. McKENNA: Objection.

25 MS. TUMARINO: This is in her direct testimony. It's

C52FUPAH

Upadhyay - redirect

1 in her affidavit. We can go through it, if you like.

2 THE COURT: Go ahead.

3 MS. McKENNA: I withdraw it.

4 THE INTERPRETER: The response is yes.

5 Q. And the massage client gave you an address in Manhattan,  
6 correct?

7 A. Yes.

8 Q. And you went to that address, correct?

9 A. Yes.

10 Q. And at that office in Manhattan what did they tell you?

11 A. They said we don't do this work. We only do divorce work.

12 Q. And did they give you information to help you?

13 A. They gave me Nahar's address.

14 Q. And after that time you bumped into Nahar in the street,  
15 correct?

16 A. Yes.

17 Q. And when you wrote Nahar's name in your diary -- when Nahar  
18 wrote her number in your diary, was that after you bumped into  
19 Nahar on the street?

20 MS. McKENNA: Objection. That's leading, your Honor.

21 THE COURT: The last one was also. You have to do it  
22 when.

23 Q. Nahar wrote her name in your diary, correct?

24 A. Not at that time. She just wrote it recently. At that  
25 time I didn't take her phone number. She was ill. I had gone

C52FUPAH

Upadhyay - redirect

1 to see her and it was at that time that I had taken her phone  
2 number.

3 Q. And when you say you had taken the phone number, is that  
4 the number that appears in your diary?

5 MS. McKENNA: Object.

6 THE COURT: Please.

7 Q. Where did you take her phone number?

8 MS. McKENNA: Objection.

9 THE COURT: That makes no sense. Sustained.

10 A. In her house, I just took it.

11 Q. Do you remember when Nahar was ill?

12 A. Yes.

13 Q. Was this before or after you bumped into her on the street?

14 A. Recently it's been two months since she was ill.

15 Q. And it's in that recent time that the number has appeared  
16 in your diary?

17 MS. McKENNA: Objection.

18 THE COURT: Please.

19 MS. TUMARINO: Does she still have Defendant's Exhibit  
20 23 in front of her?

21 THE INTERPRETER: Yes.

22 Q. Ms. Upadhyay -- you can give it back to me.

23 Ms. Upadhyay, how many times did the Sethis ask you to  
24 sign your taxes?

25 A. One time.

C52FUPAH

Upadhyay - redirect

1 Q. Did you ever meet the Sethi's accountant in person?

2 A. What is an accountant?

3 Q. Did you ever meet the person the Sethi's hired to prepare  
4 your taxes?

5 A. I have never seen any -- I have never even seen any such  
6 person.

7 Q. On how many occasions did you discuss Shaku's lawsuit with  
8 her?

9 A. About the case only one time, that's all. Why are they  
10 keeping on asking the same question?

11 Q. When you lived with Shikha Sethi and Ganesh Raj, you did  
12 not see Shaku regularly, correct?

13 THE COURT: She lived with them in Virginia?

14 MS. TUMARINO: Manhattan. Either.

15 MS. McKENNA: It's also leading, your Honor.

16 THE COURT: Yes, it also is leading. How often.

17 Q. How often did you see Shaku when you lived with Shikha  
18 Sethi and Ganesh Raj in either Virginia or Manhattan?

19 A. I used to work there, so when would I meet her?

20 Q. And when you lived in New York City with Shikha Sethi and  
21 Ganesh Raj, how often did you see Shaku?

22 A. I didn't meet at that time.

23 Q. Can you tell us from your memory what Shaku's telephone  
24 number is?

25 A. I don't remember this much.

C52FUPAH

Upadhyay - redirect

1 THE COURT: Do you have telephone numbers stored in  
2 your telephone?

3 THE WITNESS: No, there is no numbers. I don't know  
4 how to put it in, I don't know how to take it out.

5 THE COURT: So how do you make calls to people?

6 THE WITNESS: I look for the number and then I dial.  
7 Sometimes it's the wrong number, then I dial again, then it's  
8 the wrong number. Like this, I keep twisting and turning and  
9 that's how I do it.

10 THE COURT: Where do you look to find the number that  
11 you're going to call?

12 THE WITNESS: I look in my book. I search in my book  
13 what this is, what that is.

14 Q. When the film was made about you and Shaku -- do you recall  
15 testifying yesterday about a film made about you and Shaku?

16 A. Yes.

17 Q. Do you recall when that was made?

18 A. At the time that I was doing my case, when I had met Nahar  
19 on the street, at that time she had sent me and it was at that  
20 time that I had done it.

21 Q. So it was after you saw Nahar on the street?

22 A. Yes. She sent me there.

23 Q. Ms. Upadhyay, during the time that you had a cell phone  
24 provided by Ronica Sethi and Berry Sethi, who paid the cell  
25 phone bill?

C52FUPAH

Upadhyay - redirect

1 A. I used to pay it.

2 Q. How did you pay it?

3 A. I used to give them the money.

4 Q. You testified this morning about your Medicaid application,  
5 correct?

6 A. Yes.

7 Q. Who filled out the Medicaid application?

8 A. They sit on the road, those people, to fill it out. At  
9 that time I had filled it out.

10 Q. On what road?

11 A. On, next to Patel's, the Patel's store on 74th, over there.  
12 My friend had taken me and gone and she told me it's good to  
13 take Medicaid it's helpful for medicines, so at that time we  
14 had made the card, the card that had been shown. It was at  
15 that time.

16 MR. N. SETHI: She said something about where it was  
17 done on the side of the road.

18 A. Like that, they sit on the road to make the Medicaid cards.

19 Q. It was at that time that you applied for Medicaid?

20 A. Yes. My friend told me to make the Medicaid so I did it.

21 Q. And who wrote on the Medicaid form?

22 MS. McKENNA: Asked and answered.

23 A. Them only, the people who gave it, the Medicaid people who  
24 sit over there. She only filled it out.

25 Q. Ms. Upadhyay filled it out?



C52FUPAH

Upadhyay - redirect

1 A. Where do I know how to write?

2 MR. N. SETHI: Keep translating as she speaks. She  
3 was saying the person who was sitting on the road who helped  
4 her to fill out the form, the person on the road who told her,  
5 she filled out the form.

6 THE COURT: Is that correct? Is that what she said?

7 THE INTERPRETER: On the table, yes.

8 MS. McKENNA: Excuse me, your Honor.

9 MS. S. SETHI: Plaintiff referred to 74th Patel, she  
10 said Queens, but Queens was not translated. That was in  
11 Queens. She said 74th Patel Brothers, Queens.

12 THE INTERPRETER: She said (Hindi). I don't recall  
13 her saying the word Queens.

14 MR. N. SETHI: She said Queens.

15 Q. Is it in Queens?

16 A. Yes.

17 Q. Before you went to work for Shikha Sethi and Ganesh Raj,  
18 you testified you had a telephone conversation, correct?

19 A. Yes.

20 Q. And you testified that during that phone conversation they  
21 told you what they would pay you, correct?

22 A. Yes.

23 Q. And they told you what they would pay you, you testified  
24 that they told you what they would pay you in Virginia or North  
25 Carolina, correct?

C52FUPAH

Upadhyay - redirect

1 A. Yes.

2 Q. Did they say during that phone conversation -- did they say  
3 anything about Manhattan in that phone conversation?

4 THE COURT: Manhattan generally or, the borough, or  
5 wages in Manhattan?

6 MS. TUMARINO: Well, I could -- I'm trying not to  
7 lead, your Honor.

8 THE COURT: Why don't you just ask the question did  
9 they say anything else about wages in any other location?

10 Q. Did they say anything else about how much they would pay  
11 you anywhere other than Virginia or North Carolina?

12 A. We come to Manhattan we'll give 2,000, they had said this.

13 Q. During that phone conversation while you were still in New  
14 Jersey?

15 A. Yes.

16 MS. TUMARINO: I don't have any further redirect, your  
17 Honor.

18 MR. ALLOY: Nothing further, your Honor.

19 THE COURT: All right.

20 MS. TUMARINO: Your Honor, if we could address the  
21 issue of exhibits, perhaps?

22 THE COURT: Just one second. Ms. Upadhyay, you're  
23 excused.

24 (Witness excused)

25 THE COURT: What about exhibits?

C52FUPAH

Upadhyay - redirect

1 MS. TUMARINO: The question of whether I'm objecting  
2 to the admissibility of any of them.

3 THE COURT: Okay. Are you?

4 MS. TUMARINO: I'm going to object to the  
5 admissibility on relevance grounds on Defendant's Exhibits 23  
6 and 24.

7 MS. McKENNA: The diaries, your Honor.

8 THE COURT: Overruled.

9 MS. TUMARINO: We have no objection to -- Defendant's  
10 Exhibit 8, only certain Bates documents within that exhibit  
11 were referenced or were discussed in the testimony yesterday.  
12 We have no objection to the exhibit provided it comes in with  
13 all of those documents.

14 THE COURT: I don't think there's a problem with that.

15 MS. McKENNA: No, your Honor.

16 MS. TUMARINO: I didn't think there would be.

17 We have an objection to Exhibit 20 on relevance  
18 grounds.

19 THE COURT: 20 is the ---

20 MS. McKENNA: Citibank records showing her address.

21 MR. ALLOY: As well as that she opened her own  
22 personal bank account.

23 THE COURT: Overruled. Is there anything else?

24 MS. TUMARINO: We have an objection to Exhibit 9, the  
25 Indian Citibank application.

C52FUPAH

Upadhyay - redirect

1 MS. McKENNA: That was used, your Honor, with respect  
2 to the signature.

3 MS. TUMARINO: Well, it has pages that were not  
4 referenced in the examination. It has --

5 THE COURT: That may be, but if they only chose to  
6 admit part of it, you would argue that they were being  
7 incomplete.

8 MS. TUMARINO: The discussion was about her Indian  
9 passport. There was no discussion or testimony about the  
10 application for the Indian Citibank account.

11 THE COURT: All right, but --

12 MS. McKENNA: The passport was used for purposes, she  
13 needed the passport for purposes of opening the account, your  
14 Honor. I'm not sure what the objection is, because as your  
15 Honor had rightly observed, if we attempted to introduce part  
16 of a document the argument could be made we were not admitting  
17 the entire document. I agree it's an appendage to the document  
18 but that's how we got it. And there was testimony, as your  
19 Honor knows, about the opening of the bank account.

20 THE COURT: I think it's also directly -- it's related  
21 to the credibility issue about her general knowledge of  
22 finances. It is relevant to the issue which I believe is in  
23 the defendant's affidavit about whether Ronica Sethi helped her  
24 open this account by obtaining the good standing statement from  
25 Chase.

C52FUPAH

Upadhyay - redirect

1 MR. ALLOY: Berry Sethi's affidavit, paragraph 15.

2 THE COURT: I think it's also generally helpful in  
3 setting time frames in the case. I'll receive it.

4 Anything else?

5 MS. TUMARINO: We have no objection to 27, Defendant's  
6 27 and 28.

7 THE COURT: Okay. I just need, remember, everything  
8 they've mentioned is in unless you object. So.

9 MS. TUMARINO: Your Honor, I'd like the opportunity to  
10 ask the witness one question about Defendant's Exhibit 20.  
11 Those may be famous last words with this particular witness,  
12 but what I'd like to keep it to is really just a question of  
13 establishing when the account was opened and who helped her  
14 open it.

15 THE COURT: You have Exhibit 9 is related, right?

16 MS. TUMARINO: No. It's a totally separate account.

17 THE COURT: To 20?

18 MS. TUMARINO: It's a totally separate account.

19 THE COURT: I'm sorry. I don't care. You can ask  
20 her.

21 MS. TUMARINO: I will try and keep it as short as  
22 possible.

23 THE COURT: I thought it was one question.

24 MS. TUMARINO: It may normally be one question. Could  
25 you call her back up?

C52FUPAH

Upadhyay - redirect

1 (Witness recalled).

2 BY MS. TUMARINO:

3 Q. Can you please show the witness Defendant's Exhibit 20?

4 THE INTERPRETER: D000183?

5 MS. TUMARINO: 183, yes.

6 Q. Ms. Upadhyay, you testified about the addresses on these  
7 documents that are Citibank bank records yesterday, correct?

8 A. Yes.

9 Q. And they reflect your address in Queens, correct?

10 A. Yes.

11 Q. Do you know when this Citibank account in Queens was  
12 opened?

13 A. I don't remember. When I took the new phone it was at that  
14 time.

15 MS. McKENNA: I can't hear you.

16 THE INTERPRETER: When I took the new phone it was at  
17 that time.

18 Q. Were you still working for Shikha Sethi and Ganesh Raj?

19 A. No.

20 Q. Was this after you were working for them?

21 A. It's been two or two and a half years.

22 Q. That you have this account?

23 A. That I opened this account. It must have been at that  
24 time. I don't remember.

25 Q. And who helped you open the Citibank account in Queens?

C52FUPAH

Upadhyay - redirect

1 MS. McKENNA: Objection.

2 THE COURT: Who if anyone.

3 Q. Who if anyone helped you open this Citibank account in  
4 Queens?

5 A. I went to Manhattan to do a massage, so her husband, I told  
6 the woman. Her husband came with me to open the account.

7 Q. So, I'm sorry, are you saying it was the husband of a  
8 massage client?

9 A. Yes.

10 MS. TUMARINO: I don't have anything further.

11 MR. ALLOY: I have nothing.

12 (Witness excused)

13 THE COURT: Okay. So other than Ms. Alam, who is not  
14 available today, I gather, the plaintiff has no other  
15 witnesses.

16 MS. TUMARINO: That's correct. Subject to perhaps a  
17 rebuttal witness.

18 THE COURT: I'm not sure that we get to rebuttal  
19 witnesses under this scheme, but why don't we, Mr. Alloy, do  
20 you want to call your first witness?

21 MS. TUMARINO: Your Honor, could we take a lunch break  
22 at this time? It's a little after 12:30.

23 THE COURT: I personal would rather not.

24 MS. McKENNA: At all?

25 THE COURT: No, I just like to continue and then break

C52FUPAH

Hearing

1 after one, okay?

2 MS. McKENNA: Can we confer for one moment, then?

3 THE COURT: Sure.

4 MS. McKENNA: Thank you.

5 (Pause)

6 THE COURT: Okay? Mr. Alloy, would you call your  
7 first witness?

8 MR. ALLOY: Sure. I'd like to call Dr. Shikha Sethi.

9 SHIKHA SETHI,

10 called as a witness by the Defendant,

11 having been duly sworn, testified as follows:

12 MS. McKENNA: Dr. Sethi, I'm going to ask you to keep  
13 your voice up, okay?

14 THE WITNESS: Yes. Is that okay?

15 THE COURT: Just don't get too close.

16 DIRECT EXAMINATION

17 BY MR. ALLOY:

18 Q. Good afternoon, Dr. Sethi. You previously have signed and  
19 submitted an affidavit in this case?

20 A. Yes, sir.

21 Q. And I'd like to show you -- and that affidavit was  
22 previously filed with the Court as part of a legal filing?

23 A. Yes, sir.

24 Q. I'd like to show you a copy of the affidavit of Dr. Shikha  
25 Sethi dated July 29, 2011.



C52FUPAH

S. Sethi - direct

1 A. Yes, sir.

2 Q. Do you recognize that document?

3 A. I do.

4 Q. And if you turn to the, I believe second to the last page,  
5 is that your signature on the document?

6 A. Yes, it is. Page 9.

7 Q. And do you remember reading this document before you signed  
8 it?

9 A. Yes.

10 Q. And you remember signing this document?

11 A. Yes.

12 Q. And you signed it in the presence of a Notary Public, is  
13 that correct?

14 A. Yes.

15 Q. And in fact, this document is your own words, correct?

16 A. I wrote it.

17 Q. Thank you, I'll take it.

18 MR. ALLOY: Do you want us to enter -- the affidavits  
19 were submitted separately as the direct testimony, not as  
20 exhibits. If you want them marked as exhibits we could offer  
21 them.

22 THE COURT: No, they don't have to be.

23 MS. McKENNA: So they're just referred to as the  
24 direct statement.

25 THE COURT: The point is she is adopting this as her

C52FUPAH

S. Sethi - direct

1 direct testimony.

2 MS. McKENNA: Thank you, your Honor.

3 MR. ALLOY: I have nothing further for the witness,  
4 thank you.

5 MS. TUMARINO: Your Honor, at this time we have  
6 various objections to the Shikha Sethi affidavit on the grounds  
7 of improper argument, relevance and hearsay. Would you like me  
8 to identify those statements?

9 THE COURT: Okay.

10 MS. TUMARINO: The paragraph 2, move to strike the  
11 second and third sentence as argument.

12 THE COURT: Denied. The defendant's counsel could  
13 have asked on the witness stand what was your reaction to the  
14 charges or the affidavit. She could have answered that way.  
15 There's nothing wrong with that.

16 MS. TUMARINO: I'd like to move to strike it on the  
17 grounds of relevance.

18 THE COURT: Overruled.

19 MS. TUMARINO: Paragraph 4A, we'd move to strike the  
20 entire paragraph as irrelevant. It doesn't have anything to do  
21 with the issue of tolling, your Honor.

22 THE COURT: But it does have to do with the issue of  
23 credibility, which is exactly what this hearing is very much  
24 focused on.

25 MS. TUMARINO: We'd also like to object to paragraph

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S. Sethi - direct

1 4B on relevance grounds as well and sentence 13, "I go through  
2 this much detail" as improper argument.

3 THE COURT: You know, you've already accepted the  
4 relevance of this by answering it, so -- you've already put in  
5 your client's version of these events. So I understand and I  
6 will not make a finding of exactly how many hours the plaintiff  
7 worked as part of this hearing, but there are issues that  
8 relate to the truthfulness of affidavits that are relevant. I  
9 have no idea whether this particular paragraph will enter into  
10 any decision I make here, but I'm not prepared to strike it out  
11 at this time.

12 MS. TUMARINO: Okay. Paragraph 7B. There was the  
13 sentence that says, "It's inconceivable that Anu cannot add,  
14 subtract and multiply numbers," we'd like to strike as improper  
15 argument.

16 THE COURT: This is 7B?

17 MS. TUMARINO: It's on page 5.

18 THE COURT: Oh, I'm sorry. I had the wrong paragraph.  
19 As I understand the affidavit, the witness is testifying and  
20 writing based on her observations having lived with the  
21 plaintiff for almost four years. I'm not striking it.

22 MS. TUMARINO: Paragraph 7F. We'd move to strike as  
23 irrelevant, the first four paragraphs that go to the amount of  
24 monies paid to her.

25 THE COURT: It's directly responsive to her testimony

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S. Sethi - direct

1 here in court that she wasn't paid. It is that she was never  
2 paid in cash and really, as I say, I will not make a finding as  
3 to exactly what she was paid, but this is relevant to the  
4 credibility of the witnesses.

5 MS. TUMARINO: And the last sentence of paragraph F,  
6 beginning with "therefore, Anu's gravest lie." I would  
7 reiterate the objection as to it being improper argument.

8 MS. McKENNA: Your Honor, we could have gotten the  
9 same testimony from the witness on direct.

10 THE COURT: Yes.

11 MS. TUMARINO: Okay. And paragraph 8E, we'd move to  
12 strike the sentence as hearsay, "They compared salaries, hours,  
13 benefits, employers and jobs all the time."

14 MS. McKENNA: I'm sorry, where are you?

15 MS. TUMARINO: It is the fourth sentence.

16 MS. McKENNA: The "she told me many times" sentence?

17 MS. TUMARINO: Yes.

18 MS. McKENNA: She's repeating what the plaintiff told  
19 her in a conversation.

20 MS. TUMARINO: And she's saying and they compared  
21 salaries, hours, benefits, employers and jobs all the time.  
22 I'm sorry, I'm thinking of the next sentence. It's, "Most of  
23 her friends were nannies and they compared salaries, hours,  
24 benefits, employers and jobs all the time."

25 THE COURT: It's a predicate to the next sentence. "I

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S. Sethi - direct

1 heard about positions and wages."

2 MS. McKENNA: It's related to the sentence before and  
3 the sentence after.

4 MS. TUMARINO: And "Anu was held in high esteem among  
5 her friends because she was paid so well." That's also  
6 hearsay.

7 THE COURT: We'll take out "Anu was held in high  
8 esteem among her friends because she was paid so well." We can  
9 strike the last sentence.

10 MS. McKENNA: Well, I suppose, your Honor, we could  
11 ask the witness, because if that's something she heard from the  
12 plaintiff then that's quite relevant.

13 THE COURT: Okay, we can follow through on that.

14 MS. TUMARINO: Do you want to do that now?

15 BY MR. ALLOY:

16 Q. Did you ever have any conversations with the plaintiff  
17 about --

18 THE COURT: Her reputation in the community?

19 MR. ALLOY: Yes.

20 A. I did.

21 Q. And can you describe the conversations you had with the  
22 plaintiff about her reputation in the Nanny community?

23 A. Anu lived with other nannies on Friday and Saturday nights  
24 when she wasn't staying at our place. She referred to those  
25 friends all the time. We saw pictures, they went to parties,

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S. Sethi - direct

1 she went to nanny parties and she was an active member of what  
2 she referred to as the nanny society, which is how I referred  
3 to Andolan because Anu referred to it as the nanny society  
4 since 2005. They thought she was very smart because she was  
5 paid so much. They also thought she was very smart because she  
6 made so much money in her massage business.

7 Q. Is that what you're referring to when you say in your  
8 affidavit that Ann was held in high esteem by her friends?

9 A. Yes, sir. That's what I mean by high esteem.

10 CROSS-EXAMINATION

11 BY MS. TUMARINO:

12 Q. Good afternoon, Ms. Sethi. My name is Amelia Tumanaro.  
13 I'm an attorney for Ms. Upadhyay.

14 MS. McKENNA: Excuse me, in the interests of my  
15 client, it's Dr. Sethi.

16 THE COURT: Dr. Sethi. She worked hard to get that in  
17 front of her name.

18 Q. Dr. Sethi, in your affidavit you state that you maintained  
19 and have a spreadsheet of payments to Anu with checks and check  
20 numbers listed for each months of Anu's employment, correct?

21 A. Yes, ma'am.

22 Q. And did you personally create that spreadsheet?

23 A. My husband and I created it together.

24 Q. Has that been produced to your attorneys?

25 A. Yes, ma'am.

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S. Sethi - cross

1 Q. Can you please turn to Exhibit 6 in defendant's exhibit  
2 binder?

3 A. Yes.

4 Q. Is that the spreadsheet that you and your husband created?

5 A. That is.

6 Q. And when did you create this spreadsheet?

7 A. We created this spreadsheet after we received the original  
8 complaint.

9 Q. In this particular lawsuit?

10 A. Yes, ma'am.

11 Q. So the lawsuit was filed in November of 2010. You created  
12 the spreadsheet after that time?

13 A. When we received the original complaint we sat down to look  
14 over Anu's pay records. The lawsuit was filed in  
15 November 2010. It was within two weeks of us receiving the  
16 original subpoena complaint that came to our workplaces and our  
17 homes.

18 Q. Is this an Excel document?

19 A. I believe we made it an Excel, yes. In fact, I know we  
20 made it an Excel.

21 Q. So given that this was created after you were served with  
22 the lawsuit, it's fair to say that you never provided plaintiff  
23 a copy of this spreadsheet, correct?

24 A. No. She had no copy of the spreadsheet.

25 Q. Ms. Sethi, in the last column --

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S. Sethi - cross

1 MS. McKENNA: Dr.

2 Q. -- where it says "reference," there's some notations next  
3 to the information for each row. Do you see that?

4 A. Yes, ma'am. In the column that says "reference"?

5 Q. Yes.

6 A. Or the column to the right of it?

7 Q. The column that I believe is underneath "reference," it  
8 looks like it's right justified?

9 A. Yes, ma'am. There are numbers there, like 2580, 2579.

10 Q. And those notes are what you relied upon for, as a source  
11 for the information in the rest of the spreadsheet, correct?

12 A. Those are the check numbers of the checks that we  
13 reference. So, for example, when it says in October 2004, we  
14 paid in November of 2004, in December of 2004, check number  
15 152, was paid on December 10, 2004 for those three months  
16 salary.

17 Q. So that was the date of the check, correct?

18 A. The date reflects the date that the check cleared, I  
19 believe it's the date that either, I'll have to look, the date  
20 that we wrote the check or the date that the check cleared our  
21 account and the numbers that as you refer in the reference  
22 column are to the check numbers. And we did get those from our  
23 Chase Bank account and Wachovia Bank account.

24 Q. Do you still have access to your Wachovia Bank account?

25 A. No, ma'am. We closed it. I cannot tell you when exactly,



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S. Sethi - cross

1 but sometime after we got to New York in 2004, I believe  
2 sometime around then. It could have been a couple of months  
3 later we closed the Wachovia account.

4 Q. So did you obtain check numbers 2580 and 2579 from your  
5 Wachovia Bank account after this lawsuit was filed?

6 A. My husband keeps records of cell phones, bank statements,  
7 even in this digital age he still keeps the paper copies. He  
8 was able to bring up the copies from Wachovia and in order to  
9 verify before we put them on the spreadsheet we confirmed them  
10 with Neeraj that deposits had been made to Anu's bank account  
11 in those exact dollar figures on those days. So, yes, we did  
12 have the paper copies of the check when we wrote the check  
13 numbers.

14 Q. If you look in the row that references July '04 and August  
15 '04 and it reflects monthly wages of \$1,400 in each of those  
16 months and then it says the method of payment is a Wachovia  
17 check, there's no date and there is no reference number,  
18 correct?

19 A. That is correct, we did not have the exact check at that  
20 time but we were able to cross reference weapons with a deposit  
21 made in Anu's account and our attorney confirmed that. We  
22 confirmed them ourselves, calling Berry on everything and our  
23 attorney was able to cross reference that. I did not have the  
24 exact check number.

25 Q. So if there were deposited there would be a \$2,800 deposit

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S. Sethi - cross

1 into plaintiff's account on or about July 2004 or August 2004  
2 or two separate \$1,400 deposits, correct?

3 A. I would assume so, yes.

4 May I add something?

5 Q. Just one second. Is it fair to say, Ms. Sethi --

6 MS. McKENNA: Excuse me.

7 Q. Dr. Sethi.

8 MS. McKENNA: I don't think the witness finished her  
9 answer.

10 Q. I'm sorry.

11 A. This particular copy of the spreadsheet was provided to the  
12 attorneys when it was first presented to the Court and I  
13 believe that some time has elapsed since then, so we have also  
14 gone back as the case has proceeded and gone back and tried to  
15 verify and reverify and get information where it wasn't as  
16 clear to her. So I do have in my mind and with me today paper  
17 copies of even more updated information than what's available  
18 here. But this was provided to the Court, I believe it's been  
19 more than several months since we provided it.

20 Q. Do you recall when you provided these updated records to  
21 your attorney?

22 A. I didn't say I provided them to my attorney. I said I have  
23 them.

24 Q. You have them with you today?

25 A. Yes, we do have some updated records today. That would,

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S. Sethi - cross

1 that certain lines of this spreadsheet will clarify things  
2 further, because we have gone back and, like I said, verified  
3 and verified.

4 MS. TUMARINO: Your Honor, I'm going to ask for the  
5 production of those -- before I continue with cross-examination  
6 about the spreadsheet and the accuracy of certain information,  
7 I'd like to ask that those records be produced since we're here  
8 today and we have an opportunity to look at them before we  
9 continue with cross here. I don't want to waste the Court's  
10 time.

11 MS. McKENNA: This spreadsheet that your Honor will  
12 recall, and I'll have Mr. Alloy supplement what I say because  
13 I'm sure I'll forget something, was prepared initially at this  
14 Court's request. All of the records that related to the  
15 transfers made and the checks written to the plaintiff were  
16 provided. What's now being requested is backup about documents  
17 they know exist that go to the personal accounts of Dr. Sethi  
18 and her husband. If we get our confidentiality agreement,  
19 we're happy to turn those documents over, but we have not -- I  
20 saw them this morning. We haven't turned them over. If we get  
21 a representation they're used only for this purpose we'll turn  
22 them over. But it certainly shouldn't hold up the continuation  
23 of the cross-examination of the doctor.

24 MS. TUMARINO: An agreement that the documents are  
25 used solely for the purposes of this case? Is that what you're

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S. Sethi - cross

1 looking for?

2 MS. McKENNA: Yes.

3 MS. TUMARINO: I have no problem with that.

4 MS. McKENNA: We don't have to enter in a written one.  
5 I'm comfortable doing this in this fashion, your Honor.

6 MS. TUMARINO: I'm happy to --

7 THE COURT: I'm very sorry, but I was actually looking  
8 up some other information relevant to the case, but, and I  
9 really wasn't following this exchange. So what is it in your  
10 stuff that goes beyond this?

11 MS. McKENNA: I'm going to let Mr. Alloy speak to  
12 that.

13 MR. ALLOY: So, in efforts to rescour every, their old  
14 bank account information, we have some bank statements dating  
15 back to '05 that show cash withdrawals that correspond with the  
16 cash item, the cash line items here. We also have one  
17 additional copy of a check that we had not seen before. Hold  
18 on, I'll tell you which -- from May of 2005. Then I believe  
19 there's some updated information about the last several months  
20 of Ms. Upadhyay's wage payments, including bank statements that  
21 show, and obviously the witness can better explain precisely  
22 what happened or what the records show.

23 MS. McKENNA: It is backup, your Honor.

24 THE COURT: Does any document that you've just  
25 described make something on this spreadsheet incorrect or does

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S. Sethi - cross

1 it just -- in other words, I'm not saying it has to be the  
2 same --

3 MR. ALLOY: I think there's one correction to the  
4 spreadsheet which we've been able to establish. It's possible  
5 that one of the check numbers is one digit off. It may have  
6 been a typo. But the line that says September '06 where there  
7 is a \$6,000 transfer and then it says plus additional transfer,  
8 I think the witness can clarify, I think that can be clarified.

9 I don't believe there's anything else on here that is  
10 rendered incorrect by the further backup.

11 THE COURT: So it's supplemental rather than  
12 corrective.

13 MS. McKENNA: Yes, your Honor.

14 THE COURT: That's all I wanted to find out.

15 MS. TUMARINO: Can I take a quick look at these  
16 documents?

17 THE COURT: Sure.

18 (Pause)

19 THE COURT: Dr. Sethi, while they're doing that, could  
20 you clarify for me what does the entry house cash refer to?

21 THE WITNESS: Yes, ma'am. House cash refers to money  
22 we collected. My kids would get some money from their  
23 grandparents for a birthday, my mom would try to help us out  
24 because we were both in training and not bringing a lot,  
25 between Anu's wages and our apartment, so we didn't have much

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S. Sethi - cross

1 at that time. So I had accumulated over that time some cash in  
2 the home. On one occasion in October 2005 when Anu asked for  
3 her salary in cash rather than go to the bank and withdraw that  
4 cash in the bank I gave her what I had accumulated. I would  
5 keep it in an envelope at home. It was mostly birthday money,  
6 a little bit from my mom.

7 THE COURT: So you withdrew the cash from your house  
8 rather than from a bank?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Okay.

11 BY MS. TUMARINO:

12 Q. And you did that again in April of 2007?

13 A. As the updated records will show, the April 2007, it was  
14 paid in cash, but it was paid from a teller withdrawal and  
15 that's reflected in the bank statements you just received. The  
16 last several months of Anu's wages she requested all in cash.  
17 I can repeat what she said in Hindi to me if it's relevant, but  
18 basically she was going to India and she wanted the money in  
19 cash.

20 Q. Do you recall, Ms. Upadhyay testified that you put her on a  
21 plane to India. Do you recall that testimony?

22 A. I don't recall the testimony. I recall the event.

23 Q. And do you remember when that was that you put her on a  
24 plane to India?

25 A. You're talking about when she finished working for us and

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S. Sethi - cross

1 went to -- I believe it is July 9, 2007. We purchased the  
2 ticket for her and we took her to the airport and I was able to  
3 actually get her, to walk with her to the gate. I introduced  
4 her to another Hindi-speaking person who was going to be on the  
5 flight and said goodbye.

6 THE COURT: If you want we can break for lunch.

7 MS. TUMARINO: I think that would make the most sense  
8 if I could just have an opportunity --

9 THE COURT: When it says AA round trip travel to  
10 India, is that American Airlines?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Okay. Let's get back together about five  
13 after two.

14 MS. TUMARINO: Your Honor, could I have a little extra  
15 time?

16 THE COURT: I just really, we need to finish and we  
17 need to get her home and we need to get -- because really, this  
18 is double the time at least that it should have been, so, 2:15.

19 MS. TUMARINO: Thank you.

20 THE COURT: Really.

21 (Luncheon recess)

22 o0o

23 AFTERNOON SESSION

24 2:15 p.m.

25 (Witness resumed)

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S. Sethi - cross

1 THE COURT: You may continue.

2 BY MS. TUMARINO:

3 Q. Okay, so this morning you provided to us bank statements  
4 dated March 24, 2007 through April 24, 2007, June 26, 2007  
5 through July 25, 2007; July 27, 2005 through August 23rd, 2005,  
6 in addition to a copy of a check made payable to Anu Upadhyay  
7 for \$3,000 dated May 31, 2005, check number 238 and in the  
8 notation line it says April and May. Does that sound like a  
9 summary of the records you provided to your attorney recently?

10 A. Yes, ma'am.

11 Q. Ms. Upadhyay came to work for you in October of 2003,  
12 correct?

13 A. I don't have the exact date. My daughter was born  
14 September 19th. I had six weeks of maternity leave. My  
15 mother-in-law was staying with me. So it was the latest in  
16 October. I think she began working about the beginning of  
17 November, because her November wages were paid prorated because  
18 she hadn't been there the full month.

19 Q. The reason I ask you is because you state in your affidavit  
20 that she began working for you from October 2003 to July 2007.

21 A. Yes, ma'am. When I wrote that, it's six weeks from  
22 September 19 would put her in our place right at the end  
23 because I had six weeks of maternity leave. When we went back  
24 and looked at the records it had everything, November wages  
25 were prorated so she started working after the first week of



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S. Sethi - cross

1 November. So I would have to say based on the way we paid her,  
2 because I do not remember paying her any cash at that time for  
3 the first week, I would assume it was either the last week of  
4 October or the first week of November. There may be a two,  
5 three or four-day period. I cannot tell you exactly. But when  
6 I made reference to October, I did not mean October 1, I meant  
7 the very end, because it was six weeks from September 19.

8 Q. And so in November of 2003 and December of 2003 you paid  
9 her by Wachovia checks and you have check numbers next to the  
10 reference?

11 A. Yes.

12 MS. McKENNA: It's Exhibit 5, is that what you're  
13 referring to?

14 MS. TUMARINO: 6.

15 Q. But you weren't able to find copies of Wachovia check  
16 numbers 2580 or 2579, correct?

17 A. The Court does not have copies. I know we must have found  
18 a copy or a record of that check to have given you the exact  
19 check reference number. The Court does not have, I believe,  
20 the face copy of the check, but I know that in order to get  
21 those exact numbers we looked at a check or we have certainty  
22 that those check numbers match those amounts paid to Anu  
23 Upadhyay.

24 Q. And how do you feel that certainty?

25 A. Which certainty?

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S. Sethi - cross

1 Q. That those were the check numbers?

2 A. As I said, it was either from my husband's paper Wachovia  
3 statement because he kept paper copies and still keeps paper  
4 copies of everything, but I cannot assure you that we provided  
5 that, in fact, I think we did not provide those exact paper  
6 copies to the Court, but I feel certain that those were the  
7 check numbers.

8 Q. And then approximately eight months later in July 2004 and  
9 August of 2004, according to your spreadsheet there were two  
10 more Wachovia checks made payable, presumably to plaintiff in  
11 the amount of \$1,400 each or perhaps it was \$2,800, correct?

12 A. Yes, ma'am.

13 Q. And there are no check numbers referenced there, correct?

14 A. That is correct.

15 Q. So you were unable to obtain the check numbers from your  
16 records?

17 A. At the time this was put together we were not able to  
18 obtain the exact numbers, that is correct.

19 Q. Do you have the check numbers now?

20 A. I do not have the check numbers right at this moment.

21 Q. Do you believe you provided them to counsel?

22 A. I do not believe I provided those exact numbers to counsel.

23 Q. But you do have them.

24 A. I believe they are in my husband's possession, yes. And we  
25 feel confident that those were paid from a check from Wachovia

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S. Sethi - cross

1 Bank.

2 Q. You said earlier you couldn't find the check numbers you  
3 didn't have the check number at the time that you relied on  
4 Neeraj's representation that there was a corresponding deposit  
5 at that time?

6 A. I believe we confirmed at the time this was made that there  
7 was a deposit made at the same time of a corresponding amount.  
8 And therefore we did not scour for the check numbers because it  
9 was confirmed in the deposits.

10 Q. Was confirmed by Neeraj Sethi?

11 A. He and I had a verbal conversation and then Josh Alloy --

12 MR. ALLOY: Don't reveal any conversations you had  
13 with counsel.

14 THE WITNESS: I apologize. Neeraj and I spoke about  
15 it.

16 Q. You didn't inspect the bank records that the monies were  
17 purportedly deposited into, correct.

18 A. No.

19 Q. Would you be surprised to learn that there's no  
20 corresponding amount for that time period?

21 MS. McKENNA: Objection.

22 MR. ALLOY: Which time period are you referring to?

23 MS. TUMARINO: To July 2004 and August 2004.

24 Q. Would you be surprised to learn there is no corresponding  
25 deposit at that time?

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S. Sethi - cross

1 A. What I would do --

2 Q. It's a yes or no Miss -- Dr. Sethi.

3 A. Yes.

4 Q. There's also in September of 2004 it references a cash  
5 teller withdrawal for \$1,400 and in the reference line it says  
6 bank statement. Have you provided that bank statement to your  
7 attorneys?

8 A. I was not able to.

9 Q. And why was it that you weren't able to provide that bank  
10 statement?

11 A. By the time I went back to look for it in 2010, I believe,  
12 as you said earlier, I was not able to get the exact statement.

13 Q. And so what's the basis of your information that this is  
14 confirmed in your bank statement? That this payment of \$1,400  
15 is confirmed by your bank statement?

16 A. It is my memory at that time because I opened a new Chase  
17 account at that time and we did not yet have our checks,  
18 because it took several weeks to get a check. I started my  
19 residency. They had a particular deal or special where  
20 residents could open a bank account at Chase. The Chase bank  
21 account I opened is the one I currently have and provided  
22 statements of this morning but we did not currently have checks  
23 so it is my memory that we went to the bank at that time and  
24 withdrew cash for that month.

25 Q. Thank you. On December 10, 2004, you wrote out a check,

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S. Sethi - cross

1 check number 152 for the wages for October 2004, November 2004  
2 and December 2004, which would total \$4,200, correct?

3 A. Yes.

4 THE COURT: Dr. Sethi, was there any requirement that  
5 Ms. Upadhyay deposit any check you gave her in any particular  
6 account?

7 THE WITNESS: No, ma'am.

8 Q. Dr. Sethi, you weren't able to find a copy of check number  
9 152, is that correct?

10 A. I wouldn't say it like that. That is not correct.

11 Q. Did you provide a copy of check 152 to your attorneys?

12 A. I am not sure that we provided a copy of check 152. I am  
13 confident that we visualized check 152 and therefore put the  
14 check number down.

15 Q. Would you be surprised to learn that there's no deposit of  
16 \$4,200 in or about or anywhere approximate to the months of  
17 December 2004, January 2005 or February 2005 of this check?

18 A. I would have to be confident the check was deposited  
19 because it cleared my account.

20 Q. Are you confident the check was made into the amount of  
21 \$4,200?

22 A. Because I do not have the check in front of me I cannot  
23 tell you exactly, but since the check cleared my account and I  
24 have a check number from a canceled check, I would be very  
25 surprised that it hadn't been deposited somewhere.

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S. Sethi - cross

1 Q. And you have a bank record of the check clearing from your  
2 account?

3 A. Yes. All the check numbers I refer to are not from a  
4 ledger I kept. These are the canceled checks in the bank  
5 statement that the bank sends you at the end of the month. So  
6 if I have a reference to a check number it's because we have a  
7 deposited check. It's not because I thought I wrote the check.  
8 It's from the statement.

9 I apologize. The answer to your question is I'd be  
10 very surprised because I know the check cleared a bank because  
11 I had the canceled. Not canceled, I had the cleared check.

12 Q. Is it possible that the amount of the check is different  
13 than --

14 THE COURT: Anything is possible.

15 Q. -- than \$4,200, the sum of those three months?

16 MS. McKENNA: Anything is possible, your Honor. The  
17 witness has said she doesn't have the check in front of her.

18 THE COURT: But that she does have a bank statement  
19 showing clearance.

20 MS. TUMARINO: But not necessarily of that amount.  
21 She shows that the check cleared but not, she can't recall that  
22 the amount cleared. I'm concerned here that there's no record  
23 of \$4,200 deposited into the plaintiff's bank account.

24 THE COURT: Was there some requirement that she  
25 deposit every check she received into some particular account?

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S. Sethi - cross

1 MS. TUMARINO: There was no requirement.

2 THE COURT: Of course not.

3 MS. TUMARINO: The plaintiff has testified she gave  
4 all these checks to the defendant and some of these are  
5 predicated by the recollection by Neeraj Sethi that all of  
6 these monies were deposited into the bank account.

7 THE COURT: I don't think that's a correct recounting  
8 of the check number 152. That is not Neeraj remembering some  
9 check 152. There is a bank record showing the clearance of  
10 check 152. From that one concludes it was deposited.

11 Q. Dr. Sethi, in the reference column there is some certain  
12 other notes, specifically in October 2006 -- sorry, in the row  
13 corresponding to December 2006, it says in the reference column  
14 plus \$1,000 bonus. Do you see that there?

15 A. Yes, ma'am.

16 Q. So this check, that reference corresponds to the amount of  
17 the check payable to Kashi Prasad for \$7,000, correct?

18 A. Yes, ma'am.

19 Q. And so is it fair to say that October 2006, November 2006,  
20 December 2006 plus \$1,000 were paid to Kashi Prasad on  
21 January 26, 2007?

22 A. Yes, ma'am.

23 Q. Okay, so is it fair to say that it's this amount including  
24 a \$1,000 bonus?

25 A. Yes, ma'am.

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S. Sethi - cross

1 Q. And what was the \$1,000 bonus for?

2 A. Christmas bonus.

3 Q. And then in June 2007 in this corresponding column it says  
4 plus \$1,000 bonus. Is it fair to say that her wages were  
5 \$2,000 in June 2007 and then you paid her in addition a \$1,000  
6 bonus?

7 A. She was paid an additional \$1,000 bonus in that time frame.  
8 We submitted the bank statements this morning and I can exactly  
9 trace for you on which day she was paid the bonus if you like,  
10 but, yes, there was an additional \$1,000 above her wages paid  
11 to her as a bonus.

12 Q. I'm just trying to clarify because on certain lines it says  
13 plus, which I think it means it's including and certain times  
14 where it says plus where I think it really does mean plus. I'd  
15 just like the record to be clarified.

16 THE COURT: Next time can we spend a little less time  
17 on three times two plus one equals seven?

18 Q. You state in your affidavit, Dr. Sethi, that in 2006 you  
19 had a conversation with the plaintiff regarding Shaku's  
20 lawsuit, correct?

21 A. Yes, ma'am.

22 Q. And you said that at that time she could recite all the  
23 facts and calculations of Shaku's case. What were the  
24 calculations that she told you?

25 A. She told me that Shaku had worked during the day and Shaku



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S. Sethi - cross

1 had worked hours at night. She told me that Shaku filed a case  
2 because she had not been paid the minimum, and she used the  
3 word "minimum." She had not been paid the minimum. And so she  
4 worked too many hours for too little money. I was surprised to  
5 see an \$800 figure in Anu's affidavit because I believe she  
6 told me Shaku had been paid closer to \$1,000, and that did not  
7 cover Shaku for all the hours that she worked.

8 She mentioned the green card issue, but that was a  
9 passing issue. The main issue of that case, and it was very  
10 detailed explained to me, was that Shaku had not been paid the  
11 correct amount of wages for the number of hours she had been  
12 worked and had not been paid the minimum.

13 Q. Did she ever tell you that she hadn't been paid the minimum  
14 wage?

15 A. She used the word minimum.

16 Q. Minimum. But she didn't specifically use the word minimum  
17 wage?

18 A. Minimum daka. Daka is wage in Hindi, so she used a  
19 combination, as we did today of an English and Hindi phrase so,  
20 yes, she did use the word minimum. Minimum daka.

21 Q. She used the word minimum in English?

22 A. Yes. That's also how we referred to the posters, it was  
23 the minimum daka poster.

24 Q. You state in your affidavit that there were wage hour  
25 posters displayed in your apartment buildings in New York City

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S. Sethi - cross

1 during the period 2004 to 2007, is that right?

2 A. Yes.

3 Q. And you state that they were displayed in Payson House and  
4 Sutton Terrace.

5 A. Yes.

6 Q. Where were they displayed in Payson House?

7 A. Payson House they were displayed in at least two different  
8 locations. In the laundry room there was a bulletin board that  
9 had -- I shouldn't say bulletin board. There were postings  
10 that referred to activities of the building and on that was  
11 prominently displayed a wage hour, federal minimum wage poster  
12 and then on the bulletin board going to the children's  
13 playroom, it's a hallway about ten feet deep. You get to the  
14 end of the hallway, you make a left into a large children's  
15 indoor playroom and there at the end of that ten-foot hallway  
16 which you cannot help but see as you're walking towards the  
17 playroom it's a bulletin board that displayed people looking  
18 for nannies, that's where we put Anu's massage poster and there  
19 too was displayed a minimum wage poster.

20 And in 2006 to seven there was one inside our  
21 apartment, inside the linen closet door in the hallway.

22 Q. And that would have been in Sutton Place?

23 A. Yes, ma'am.

24 Q. Sutton Terrace.

25 Now, at Payson House did you personally translate the

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S. Sethi - cross

1 federal minimum wage poster located in either of the -- I'm  
2 sorry. Were they federal minimum wage posters located in both  
3 locations?

4 A. I would assume that they were federal minimum wage posters.  
5 I cannot be a hundred percent sure. They were definitely  
6 minimum wage posters. I would assume that they were federal  
7 minimum wage posters. They may have been New York State. I  
8 cannot tell you for sure.

9 Q. Do you remember what the minimum wage was at the time?

10 A. I know now what New York State and federal minimum wage  
11 was.

12 Q. Do you remember what the minimum wage was at the time you  
13 were living in Payson House?

14 A. I do know what minimum wage was. It changed during those  
15 years, as you know. It changed in 2005, it changed in January  
16 '06, it changed again in '07. Not the federal --

17 THE COURT: Not the federal.

18 A. The federal has remained the same. The federal has stayed  
19 the same until recently.

20 Q. Did you translate into Hindi these wage -- either federal  
21 or state wage or hour posters that were posted in Payson House  
22 to the plaintiff?

23 A. I did. In the context of our discussion about Shaku's  
24 lawsuit, yes, I did, and again in 2006 when we moved into the  
25 apartment and she saw the poster again the minimum daka poster.

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S. Sethi - cross

1 There were really a few parts of that poster relevant to her,  
2 because she doesn't fall under the child labor rules and those  
3 parts of it.

4 Q. So let's take the first location in Payson House. Where  
5 did this conversation, this translation take place?

6 A. The translation took place in my living room in apartment,  
7 27K.

8 Q. And you had a copy of the notice with you?

9 A. No. But I referred Anu to it. It was downstairs and she  
10 was already familiar from having talked with Berry. And again  
11 it had a name, it was an item, it was a minimum daka poster.  
12 She knew that. She was already familiar. It was not a new  
13 concept.

14 Q. Did you -- this first translation at Payson House, what  
15 year would it have been?

16 A. It was in connection in spring 2006 with the discussion of  
17 Shaku's lawsuit.

18 Q. Do you know when Shaku's lawsuit was filed?

19 A. I cannot say for sure.

20 Q. So you were living in Payson House in the spring 2006?

21 A. Yes, ma'am.

22 Q. And was that the only time that you translated the minimum  
23 wage poster to her while you were living at Payson House.

24 A. We discussed the content of the poster in terms of minimum  
25 wage on the occasion when Anu asked for arrays when we moved to

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S. Sethi - cross

1 New York City in 2004, in the fall, when she negotiated her  
2 salary up from 1400 to 1600 a month. We discussed minimum wage  
3 but in terms of the translation -- so we discussed the contents  
4 of the poster in 2004 as well, but I did not refer her to the  
5 exact poster at that time. In 2006, she was referred to the  
6 actual minimum daka poster, but the content, as I understood it  
7 to be applicable to her, was all discussed in the fall of 2004.

8 Q. Fall of 2004 you were living where?

9 A. We had just moved back to New York and we had, Anu  
10 initiated a conversation to increase her salary and in that  
11 context of that conversation, which I remember extremely well,  
12 the applicable contents of the poster were discussed with her  
13 but I did not directly refer her to a physical poster in 2004.

14 Q. What were the applicable contents of the poster?

15 A. The concept of number of hours a week and the concept that  
16 there was a minimum wage and she should make more than that.

17 Q. And what was said about the concept of the number of hours  
18 per week?

19 A. That she should work 40 hours per week. Her hours with us  
20 were fixed because she left at the same time every day and was  
21 not physically in our presence from Friday at 7:00 p.m. until  
22 whatever time she came back on Sunday. It was after we went to  
23 sleep. She physically was never in our apartment ever.

24 I think on one weekend when she was first diagnosed  
25 with rheumatoid arthritis she was unable to leave the

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S. Sethi - cross

1 apartment. So when I say "ever" I should be careful. There  
2 may have been one weekend when she was not feeling well and  
3 stayed back, not to work, but she was not feeling well. Other  
4 than that, she physically was not present on weekends. And so  
5 her hours were fixed.

6 So we discussed hours and we discussed the minimum  
7 daka.

8 Q. So you said to her she should not work more than 40 hours?

9 A. I did not say exactly that.

10 Q. What was it that you discussed about the hours?

11 A. We said that a fair number of hours a week was most people  
12 worked eight hours a day, five days a week. I can tell you the  
13 exact conversation we had, if you would like.

14 Q. Not quite. Thank you.

15 So you had a discussion, you discussed the concept of  
16 the number of hours per week and this was in the fall of 2004.

17 A. Yes.

18 Q. And at that time you did not have the poster physically  
19 with you?

20 MS. McKENNA: Asked and answered.

21 THE COURT: Also there's no 40-hour limit for live-in  
22 help, is there?

23 MS. TUMARINO: No.

24 THE COURT: Okay. So why don't we go on?

25 Q. Did you advise her of her right to earn overtime pay after

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S. Sethi - cross

1 a certain number of hours per week?

2 THE COURT: It's not applicable.

3 MS. TUMARINO: In New York State law after 44 hours  
4 you're entitled to overtime.

5 THE COURT: And at the highest minimum wage during  
6 this period, which did not start until January 1, 2007, someone  
7 making \$2,000 a month could have worked 280 hours per month and  
8 still made minimum wage.

9 MS. TUMARINO: Your Honor, you yourself has said we're  
10 not litigating the number of hours --

11 THE COURT: No, but that happens to be a fact.

12 MS. TUMARINO: That may be a fact, but the question is  
13 whether the plaintiff was aware of her rights and whether  
14 defendants advised her of her rights, which is what the subject  
15 matter of the hearing is.

16 THE COURT: My only point is that your questions are  
17 based on incorrect assumptions about the law. They should not  
18 continue to be misleading in this way.

19 MS. TUMARINO: Your Honor, I'm asking the witness  
20 about what the discussion was --

21 THE COURT: The issue isn't whether the witness  
22 understands the wage and hour laws. The --

23 MS. TUMARINO: She's stating she explained the  
24 contents of the poster to her without referring to the poster  
25 at the time and I'm trying to get a sense of what the subject,

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S. Sethi - cross

1 what was discussed in that conversation.

2 MS. McKENNA: Your Honor, the witness has offered now  
3 on two occasions to give her full recounting of that  
4 conversation and counsel, as she's entitled to, has declined  
5 but she shouldn't then be allowed to argue with the witness  
6 about the conversation if she doesn't want to hear the  
7 conversation.

8 MS. TUMARINO: I'm not arguing. I'm just asking  
9 questions about whether she advised her of her right to  
10 overtime pay. That's a yes or no question.

11 MS. McKENNA: Well, that question you haven't asked  
12 yet.

13 Q. Did you advise plaintiff of her right to overtime pay after  
14 working a certain number of hours per week?

15 A. We specifically discussed that in the spring of 2006 in  
16 connection with Shaku's lawsuit as it referenced the minimum  
17 wage laws because that's what was discussed at that time. In  
18 2004 we discussed that Anu did not have any overtime because  
19 her hours were fixed and that's what she wanted so she could do  
20 her massage business.

21 Q. And in spring of 2006 when you discussed the poster, the  
22 minimum wage and hour poster, did you have a copy of the poster  
23 with you?

24 A. Yes, I did. In spring of 2006 I referred Anu to it. She  
25 had been living in the building for two years. She was --I



C52FUPAH

S. Sethi - cross

1 should not say familiar. I referred her to it and then it was  
2 on the bulletin board and then as we were walking by a couple  
3 of days later I pointed it out to her then. She was already  
4 familiar with the concept by the fall of 2006, very familiar.  
5 It was not a new discussion.

6 Q. Did you translate the poster for her word-for-word?

7 A. Including the childhood section and the whole poster or  
8 just the ones that applied to her?

9 Q. The minimum wage portion.

10 A. Yes, I translated it to her.

11 Q. Did you translate the minimum wage section into Hindi?

12 A. Yes, ma'am.

13 Q. Did you translate any language to her regarding overtime to  
14 her in Hindi?

15 A. In 2006?

16 Q. Yes.

17 A. Yes, ma'am.

18 Q. And you were located, you were standing in front of the  
19 poster at the time?

20 A. I referenced the poster in our conversation. We discussed  
21 minimum daka. I translated it and as we were walking by  
22 together, maybe a day or two later I physically represented the  
23 poster to her again, the one in the bulletin board next to the  
24 playroom.

25 Q. You didn't translate the notice to her while you were

C52FUPAH

S. Sethi - cross

1 physically standing in front of it word-for-word, is that  
2 right?

3 A. I saw the poster everywhere, because they're also posted in  
4 our --

5 Q. That's a yes or no question, Dr. Sethi.

6 A. Can you repeat the question so I can answer yes or no?

7 Q. You did not, while you were standing in front of the poster  
8 in 2006 you did not translate word-for-word into Hindi for the  
9 plaintiff the contents of the poster, did you?

10 THE COURT: You did not, did you?

11 Q. Did you translate word-for-word into Hindi for the  
12 plaintiff in 2006 the contents of the wage hour poster?

13 A. Yes, I did.

14 Q. While you were standing in front of it?

15 A. We were not standing in front of it at the moment I did the  
16 translation, that's why I'm having trouble understanding the  
17 question. The applicable sentences are few.

18 Q. How did you know the contents of the poster word-for-word  
19 if you weren't standing in front of it?

20 A. I did not translate the child labor parts of it, I did not  
21 translate the parts that I believed didn't pertain to her. The  
22 minimum wage and the overtime were specifically translated by  
23 me. I saw that poster everywhere.

24 Q. So you had the poster memorized?

25 A. There are only two sentences. I can tell you what they are

C52FUPAH

S. Sethi - cross

1 right now because there's only two sentences.

2 Q. That's okay. You also state in your affidavit that you had  
3 a conversation with the plaintiff about Shaku's lawsuit and in  
4 that context you told her that she had no case against you and  
5 your husband, is that correct? I'm just reading from your  
6 affidavit. That's not the question.

7 A. I understand. If you could read me exactly what I said.

8 Q. "I told Anu truthfully that she had no case against Ganesh  
9 and I since each month we had been paying her every dollar,  
10 plus bonuses of her salary at her direction, had been paying  
11 her way higher than minimum wage and had kept records of  
12 everything." Do you recall that?

13 A. Yes. I said that to her specifically.

14 Q. Can you tell me what the records were that you kept?

15 A. As you can see from our checks, I labeled most checks.

16 Q. You labeled? I'm sorry?

17 A. I labeled most checks with the months of salary that were  
18 being paid at the bottom at the memo line. My father-in-law  
19 kept the records of the bank transfers and since we had  
20 maintained a single bank account aside from the Wachovia we  
21 knew there were always records of the withdrawals. And so we  
22 felt very confident that we knew we had -- I knew I had paid  
23 Anu every month and Anu acknowledged that to me. She said no,  
24 you have paid me every dollar that you owed me and I have no  
25 case against you.

C52FUPAH

S. Sethi - cross

1 Q. What other records were you referring to?

2 A. I was referring to the bank records.

3 Q. Did you keep any other records of the plaintiff's  
4 employment while she worked for you?

5 A. Am I allowed to ask what kind of records you mean?

6 Q. Any kind of records. Like the checks, the bank records,  
7 the wire transfers, any other records you kept pertaining to  
8 her employment?

9 A. We have the records of -- I'm going to say we have other  
10 things that pertain to her employment. I don't know if those  
11 are the type of records that you're talking about.

12 Q. Well, tell me what they are.

13 A. We have the taxes that we paid for her, employer taxes, we  
14 have records of those every quarter. I assume that's a record  
15 in connection with her employment.

16 Q. Sure. Anything else?

17 A. No. We asked Anu on two occasions to sign something.

18 "Sign" 'is a tough word as we have seen for her. We asked Anu  
19 on two occasions, especially when she started talking about  
20 Shaku's lawsuit as well as in between, to sign something either  
21 time and hour or that she was receiving money, and she  
22 specifically turned around and said -- I can say in Hindi if  
23 you like because I remember very clear what she said.

24 Q. I don't understand Hindi.

25 A. She said I'm going to sign anything you give me but later

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S. Sethi - cross

1 on I'm just going to turn around and say I didn't know what it  
2 was. And when we were finished with her employment in 2007 she  
3 said the same thing. She said, yes, you have paid me  
4 everything, you have treated me so well. We said Anu will you  
5 sign or give your thumbprint on something that says we owe you  
6 no money? She said I'll sign whatever you want, but I'm going  
7 to turn around and say I didn't know what I was signing.

8 Q. So you asked her to sign on two occasions specifically?

9 A. Yes.

10 Q. And both times she said I'll sign whatever you want but I'm  
11 going to say I didn't know what I was signing?

12 A. That's exactly what she said twice.

13 Q. And the first time was when?

14 A. We asked her to keep time and hour records of when she was  
15 coming and going.

16 Q. When was that?

17 A. 2006.

18 Q. What month, do you remember?

19 A. No.

20 Q. You asked her to keep the records or to sign records?

21 A. We asked her to sign them. She wouldn't have been able to  
22 keep them, but we asked her to sign them if we provided them  
23 and explained to her what they were. She essentially refused.

24 Q. Did you draft those records?

25 A. Did I present her with something to sign?

C52FUPAH

S. Sethi - cross

1 Q. Yes, did you present her with something to sign?

2 A. I did not. I had the conversation with her first and  
3 that's what she said. In my mind that was a refusal. She  
4 didn't refuse to sign, but she wasn't, it didn't seem to be  
5 worth the effort.

6 Q. And then the second occasion when you asked her to sign  
7 something, did you present her with something to sign?

8 A. I did not.

9 Q. You did not.

10 A. Did not.

11 Q. You state in your affidavit, "In addition I personally  
12 counseled Anu on too many occasions to count about her salary,  
13 minimum wage, weekly wages and monthly wages." Why was it that  
14 you counseled her on so many occasions?

15 A. Because she was always talking about how much she was  
16 making, how much other nannies were making. She talked  
17 constantly about how much she made from her massage business.  
18 She told -- which we found very embarrassing to ourselves --

19 Q. I'm sorry, why did you counsel her on so many occasions?

20 A. We counseled her that she was being paid well and was she  
21 happy.

22 Q. Why was it so many occasions? That's the question.

23 A. Because she talked constantly about how much she was  
24 making, how much other nannies were making, how much she could  
25 be making if all she did was her massage business, how she made

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S. Sethi - cross

1 more in her massage business than what we were paying her even  
2 though we paid her \$2,000 a month. She's had that conversation  
3 with us when guests would come over when she would brag about  
4 her massage business and talk about how much money she made.  
5 So we went back to, you know, you feel a little threatened,  
6 because we said, are you happy, are we paying you well? And  
7 you say, look, this is what we're supposed to pay and this is  
8 what you are getting paid and she would tell us what other  
9 nannies were making. They were never making as much as her.

10 Q. These occasions, would you say there were more than ten of  
11 them?

12 A. There were many more than ten occasions when we talked  
13 about her wages.

14 Q. About her wages?

15 A. About her wages.

16 Q. Her massage work?

17 A. No, about her salary with us. There were many more than  
18 ten occasions when we discussed how much we were paying her.  
19 Not that she was asking for more, but there was a conversation  
20 about how much money she was earning, how much money she was  
21 sending to India, how much money she should be sending to  
22 India, how much money other people were making, how much she's  
23 making from her massage. I'm not saying that they were --

24 Q. Were those --

25 MS. McKENNA: Can she let her finish the answer?

C52FUPAH

S. Sethi - cross

1 Q. Go ahead.

2 A. There weren't that many occasions when we discussed minimum  
3 wage, but I'm saying in terms of salary, weekly salary, monthly  
4 salary, how much she was making, about her wages and  
5 importantly how much should she be sending back to India. She  
6 cried on a lot of occasions. We had all these conversations.  
7 Those were too many to count.

8 Q. When she came to work for you, you stated in your affidavit  
9 that on the plaintiff's first day of work for you in Virginia  
10 she negotiated her salary, correct?

11 A. Yes, ma'am.

12 Q. And you say that, "She told us what she was being paid by  
13 my cousins Berry and Ronica on a weekly, hourly and monthly  
14 basis," is that correct?

15 A. Yes, ma'am.

16 Q. What did she tell you she was being paid weekly?

17 A. She was getting about \$300 weekly.

18 Q. And what did she tell you she was being paid -- so she told  
19 you she was getting paid \$300 weekly?

20 A. Yes, ma'am.

21 Q. What did she tell you she was being paid hourly?

22 A. There were times when Anu used the hourly rate very  
23 specifically and there are times when she used a ballpark,  
24 because her calculations are done in round numbers. That's why  
25 she always sent a round number of dollars to India. It



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S. Sethi - cross

1 wouldn't be 2200, it would be 2000 because she could round off  
2 \$2,000 in rupees. She would always round off her numbers. It  
3 was roughly \$7 an hour. I think at that time in early 2000,  
4 late 2003 it was like she heard that number somewhere and she  
5 was kind of internally fixated on that number.

6 By the time we had gotten to fall 2004 she had gotten  
7 very shrewd.

8 Q. So late 2003 she told you --

9 A. (Hindi) \$7 an hour, but she was more fixated on the weekly  
10 and monthly aspect at that time. But she did make a mention of  
11 \$7 an hour.

12 Q. How much was she earning monthly, did she tell you she was  
13 earning monthly?

14 A. \$300 a week. The week to month conversion becomes -- I  
15 can't tell for sure that she told me in 2003 the monthly. I  
16 know it was \$300 a week. What she was earning with Berry and  
17 Ronica. With us she wanted to be paid monthly.

18 Q. You didn't pay her monthly, though, correct?

19 A. Every month at the end of the month I asked Anu how can I  
20 pay you this month. And every month that she worked for us she  
21 told me what to do with her salary. To pay her in cash, to  
22 send it, to write her a check or to wait until the next month  
23 and then put the two of them together. Every month she was  
24 asked at the end of the month how shall I pay you for this  
25 month. We wanted to pay her by week or biweekly. She did not

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S. Sethi - cross

1 want that.

2 Q. If she said hang on to it, you wouldn't pay her, you would  
3 wait until the next month, is that correct?

4 A. If she said hang on to it, then when she requested that  
5 month's payment, for example, in a check, we would pay both  
6 months together. But she was asked every month how do you want  
7 to be paid.

8 Q. When did you know you would be moving back to New York City  
9 from Virginia?

10 A. We didn't know until very late. Very, very late.

11 Q. Was it in your plans that you might move back to New York  
12 when you were living in Virginia?

13 A. We had no such concept. The idea that we spoke to Anu on  
14 the phone in 2003 and told her we were going back to New York  
15 in eight months is not true. The reason for that is once my  
16 husband decided what he wanted to do, and he was still actively  
17 interviewing for fellowships and job positions -- he was  
18 interviewing for a private practice job in Charlottesville, he  
19 was interviewing for jobs in Washington, D.C. Once he decided  
20 what to do, which was accept the fellowship at Memorial Sloan  
21 Kettering, I had to negotiate a transfer in the middle of my  
22 residency back up to New York. This does not normally occur.  
23 It's very rare and I was super lucky to be able to do that. So  
24 that did not come through until literally June of 2004.

25 Q. When did your husband first start applying for residencies

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S. Sethi - cross

1 in New York?

2 A. Fellowships in New York.

3 Q. Fellowships, I'm sorry.

4 A. I couldn't tell you. They usually apply -- I don't know.

5 I don't know if it was the spring of 2004. The interviews  
6 were, I want to say like March-April.

7 Q. So he wasn't applying in fall of 2003?

8 A. I was furious at him because he kind of wasn't moving  
9 along. He was fixated on this job at the National Institutes  
10 of Health and he thought that was going to work out and it  
11 would be close to Charlottesville and I would stay in  
12 Charlottesville and they led him along for a long time. So we  
13 really had absolutely no plans. Once his plans were  
14 determined, I had no way to get to New York.

15 Q. Were you applying for any fellowships or residencies in New  
16 York?

17 A. Not at all. I was smack dab in the middle of my residency.  
18 I had no applications of any kind.

19 Q. In your affidavit you state that you encouraged her in 2006  
20 to contact a lawyer and understand her rights, is that correct?  
21 And she was still working for you in 2006.

22 A. Yes.

23 Q. Around when in 2006 was this?

24 A. This is going to be late of 2006, kind of in the fall. It  
25 also came up briefly in connection with Shaku's case. Again we

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S. Sethi - cross

1 had a very detailed conversation at that point till late in the  
2 night.

3 Q. When was this conversation?

4 A. The conversation about Shaku's case was spring '06 so it  
5 was briefly mentioned at that time that if she thought she had  
6 any issues she should figure them out. And then again in the  
7 fall of '06, when she was actively complaining about lots of  
8 things, I said if you think you have an issue -- she was free  
9 to come and go every weekend.

10 Q. You said she was actively complaining about lawsuit issues?

11 A. No, not -- I didn't say lawsuit issues. She was  
12 complaining about wages and missing things in the fall of '06.

13 Q. Missing things from you?

14 A. She never said she missed anything from me. And had she, I  
15 offered to her, I said if you think I'm missing anything, you  
16 tell me, I'll get my records, exactly what I wrote in my  
17 affidavit. I will go over them with you. I said we have  
18 simple bank accounts. I had everything documented. If you  
19 feel like you have any issue with me with our time, you tell  
20 me, and she said you have paid me everything, I have no quarrel  
21 with you.

22 Q. Can you turn to Exhibit 7, please? You obtained, when you  
23 were drafting the spreadsheet that's been marked as Defendant's  
24 Exhibit 6 regarding your payment of wages to the plaintiff, you  
25 obtained certain records from your father-in-law regarding

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S. Sethi - cross

1 money transfers, correct?

2 A. Yes.

3 Q. And he provided you copies of correspondence sent, is that  
4 right?

5 A. Yes.

6 Q. And it looks like there was in February of 2004 you sent or  
7 your father-in-law sent a wire transfer in the amount of \$2,100  
8 to the plaintiff's relatives in India, correct?

9 A. Yes.

10 Q. And that was supposed to be, according to your spreadsheet,  
11 wages for January 2004 and February 2004, correct? I'm looking  
12 at Defendant's Exhibit 6, I'm sorry.

13 A. Yes, ma'am. It was a partial payment for February.

14 Q. And then --

15 A. The other half of February went in the Western Union  
16 transfer that Anu mentioned.

17 Q. In March?

18 A. Yes, ma'am, from Kroger on Highway 29.

19 Q. In Defendant's Exhibit 7 are copies of the wire transfer  
20 documents, is that right?

21 A. Yes.

22 Q. And D000124 is a copy of that wire transfer, correct? It's  
23 a signed copy from your father-in-law? Is that right?

24 A. At Anu's direct request my father-in-law --

25 Q. I'm sorry --

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S. Sethi - cross

1 A. That's a yes or no?

2 Q. That's a yes or no question.

3 A. That's not a copy of the transfer so I don't know how to  
4 answer you. The answer would be, no, it is not a copy of the  
5 transfer.

6 Q. This is correspondence directing the transfer, is that  
7 right?

8 A. Yes, ma'am.

9 Q. And that's confirmed in his bank account records, is that  
10 right?

11 A. Yes, ma'am.

12 Q. And that would be on D000122?

13 A. Yes, ma'am.

14 Q. And then later on that year there was another wire transfer  
15 in July of 2004 for the wages of April 2004, May 2004 and  
16 June 2004, correct?

17 A. Yes, ma'am.

18 Q. And Defendant's Exhibit 7, Bates number D000125 is  
19 correspondence directing that transfer, correct?

20 A. Yes, ma'am.

21 Q. And then in 2006, according to your spreadsheet, the  
22 plaintiff's wages for July 2006, August, 2006 and September,  
23 2006 were sent by a wire transfer arranged by your  
24 father-in-law on October 20, 2006, is that right?

25 A. No.

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S. Sethi - cross

1 Q. Okay.

2 A. No, pertaining to one part of that.

3 Q. Okay.

4 A. Can I explain?

5 Q. Please.

6 A. That is the instance that Anu described when there was a  
7 discrepancy. She described it several times in her testimony,  
8 when there was a discrepancy between the bank account  
9 information sent by her son via e-mail to us. The e-mail is  
10 provided within the same exhibit as well, Exhibit 7, and the  
11 name on the account. And so when you say October 20, I cannot  
12 be sure that the money cleared on the 20th or that was the date  
13 of the request, because, as she said, there was a back and  
14 forth and the money wasn't actually received. It was received,  
15 but it was not received until a couple, I believe a couple of  
16 weeks later. We have the actual bank statement for when it was  
17 taken out of the account. There was a second letter sent  
18 clarifying the name to whom it should go.

19 MS. McKENNA: Your Honor, I believe that's in Exhibit  
20 7, D123.

21 Q. Yes. So in Exhibit 7 the next page, there are three pages  
22 that are additional, page 1 of 3, 2 of 3, 3 of 3 Bates numbered  
23 D000131 through 000133. Do you see those three documents  
24 there?

25 A. Yes, ma'am.

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S. Sethi - cross

1 Q. And so all of this correspondence relates to the same --  
2 does all of the correspondence relate to the October 20, 2006  
3 transfer?

4 A. Yes, ma'am, to the transfer, two lakh, yes.

5 Q. In the reference column it says -- there's also, if I could  
6 just ask one additional question. D000129, and D000130 are  
7 both dated 20 October, 2006, correct?

8 A. They are both dated, yes.

9 Q. And they're both unsigned, is that right?

10 A. Yes.

11 Q. And one of them asks to arrange payment for two lakh,  
12 44,000 only, and that is D000129, correct?

13 A. Yes, ma'am.

14 Q. And then by letter of the same date also unsigned, the  
15 defendant's Bates numbered D00130, it has the number written  
16 out at two comma 43,000 and then in the parenthesis it says  
17 rupees two lakh and 44,000 only.

18 A. Yes, ma'am.

19 Q. Do you know which of these were sent?

20 A. I don't know which of those were sent. I would refer to  
21 the letters that come after that clarify. I believe it's the  
22 244 that is sent because the letter dated November 30 clarifies  
23 that there was an error, the draft had reached ICIC branch at  
24 Mumbai and it's the issue of 244.

25 Q. Then on your spreadsheet Defendant's Exhibit 6 in the row



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S. Sethi - cross

1     pertaining to September 2006 it says at the end of that 6,000  
2     equals INR 243000 plus additional transfer to Upadhyay 2,000  
3     44,000 equals U.S. 6,000 on 11/30/2006.

4     A. Yes, ma'am, this was the typo that Josh Alloy was referring  
5     to earlier. That number should have been corrected when the  
6     confusion was resolved to 244, that's correct.

7     Q. So there was only one \$6,000 payment sent at that time?

8     A. Yes, ma'am.

9     Q. Thank you. Under May 2005 there's a row there that doesn't  
10    have a corresponding date that says air fare, hotel, Disney  
11    tickets, food, and then in the reference column, Disney  
12    vacation value \$800. Do you see that?

13    A. Yes, ma'am.

14    Q. Was that paid to Ms. Upadhyay as wages?

15    A. No, ma'am. That was just a trip she came with us on. She  
16    went to Disney. That is not calculated in her wages at all.  
17    That is not regarded as a bonus either.

18    Q. Okay. Can you explain to me, the tally at the bottom says  
19    total paid without bonuses equals 72,100. Do you see that?

20    A. Yes, ma'am.

21    Q. And then the second row after that, which I presume is a  
22    typo says total paid out bonuses 76,900?

23    A. Yes, ma'am.

24    Q. And the difference between those two numbers I'll represent  
25    is \$4,800?

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S. Sethi - cross

1 A. Yes, ma'am.

2 Q. Could you tell me where the \$4,800, where those bonuses  
3 were paid?

4 A. It seems like in this particular year we are including  
5 \$2,800 of cash bonus paid in December of '04, December of 2006  
6 paid in June of 2007. We should have -- and then it appears on  
7 this particular sheet that that second number may include the  
8 value of her air fare and the Disney vacation which would be an  
9 additional money. I believe that's probably how it's put  
10 together, but we did not regard the value of the vacation or  
11 the ticket in her calculation of wages.

12 Q. Is that count considered to be bonuses?

13 A. No. This is a version -- as you said, there's a typo  
14 there. No. The vacation and the ticket were given by us to  
15 her as given. We paid her plenty of bonuses. Those were just  
16 additional.

17 Q. So the bonuses that are reflected on this sheet are the  
18 \$800 bonus in January 2005, the thousand dollar bonus in  
19 January 2006, and a thousand dollar bonus in July of 2007, is  
20 that right?

21 MR. ALLOY: I'm just going to object as to relevance  
22 grounds.

23 MS. TUMARINO: Your Honor, it's admitted into the  
24 record, Ms. Sethi's representation in her affidavit that she  
25 paid plaintiff 76,000 -- let me read it. \$76,900 in paragraph

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S. Sethi - cross

1 7F and I'm just trying to get a sense of what the basis for  
2 that number is.

3 THE COURT: And I think we now all understand that  
4 with more clarification, that the additional \$2,000  
5 representing the Disney vacation and the round trip air fare to  
6 India should not be included in the wage amount. Correct?

7 MS. McKENNA: Yes, your Honor.

8 THE WITNESS: Yes, ma'am.

9 MS. TUMARINO: Okay. I just have a couple of more  
10 questions.

11 Q. Ms. Upadhyay does not drive, correct?

12 A. Not to my knowledge.

13 Q. She didn't drive at any time when she was working for you?

14 A. No, ma'am.

15 Q. You stated that the plaintiff calculated -- before you  
16 moved back to New York, you state that the plaintiff  
17 calculated -- negotiated her salary again, then calculated her  
18 desired hourly and weekly rate, taking into account that she  
19 wanted to be paid monthly and included an up charge for the  
20 extra weeks per year that did not fall into the four week per  
21 month cycle, is that right?

22 What do you mean by upcharge, or what did she mean by  
23 upcharge?

24 A. May I explain or is it a yes or no?

25 That reference is a conversation I mentioned actually

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S. Sethi - cross

1 in the fall of 2004. The paragraph does not specifically say  
2 that that occurred in Virginia. I realize that I am being a  
3 little vague because I talked about her negotiating her hours  
4 in the prior paragraph which we did have that conversation in  
5 Charlottesville. The wage conversation actually happened later  
6 in 2004, once we were actually back in New York, and I believe  
7 it was Anu's interaction back again with nannies in New York  
8 and the resurgence of her massage business and she came to us  
9 and said she wanted to talk about salary.

10 So that was the conversation I referenced earlier  
11 about where we very specifically discussed, she discussed an  
12 hourly wage, she specifically said this is a weekly rate, but  
13 you're paying me monthly and so there should be more because --  
14 she entered the conversation, it was negotiation.

15 Q. I'm sorry when she entered the conversation --

16 A. When she entered the conversation it was a negotiation  
17 between myself, my husband and Anu all together, and her  
18 starting point was a certain dollar per hour, a certain number  
19 of dollars per week and we negotiated from there and ended up  
20 with the \$1,600 a month number because she still wanted to be  
21 paid monthly and that salary actually did not take effect until  
22 January. That conversation did not happen in Virginia. I  
23 realize I was vague in that paragraph. That actually occurred  
24 in New York.

25 MS. TUMARINO: I'd like to move to strike that answer

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S. Sethi - cross

1 as non-responsive. Can you read back my last question?

2 THE COURT: What do you mean by upcharge or what did  
3 she mean by upcharge?

4 A. Anu was able to tell me that she should be getting paid  
5 more because she was negotiating a weekly rate with us, but she  
6 wanted to be paid monthly. And she TOLD me that her monthly  
7 salary then should not simply be equivalent to four weeks pay  
8 because there were more weeks in a year than there were months.  
9 That's what I meant by upcharge.

10 Q. And did she tell you how much extra weeks in a year don't  
11 fall into the four-month period?

12 A. Yes. There are (Hindi).

13 Q. What did she say?

14 A. Four weeks. (Hindi) is four weeks. There are four weeks a  
15 year that I will not be paid.

16 Q. So by upcharge she was referring to not receiving in effect  
17 four weeks worth of wages in a year?

18 A. No, that is not what she meant.

19 Q. Please explain to it me.

20 A. It's not that she never received anything. This is a  
21 negotiation. Her -- may I explain?

22 Q. I'm sorry. It's not that she didn't receive, I'm just  
23 trying to get a sense of her understanding of upcharge was to  
24 include the additional four weeks per year?

25 THE COURT: Compensate for the fact that if you only

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S. Sethi - cross

1 think of each month as having four weeks you're missing some  
2 days every month.

3 Q. So she asked you --

4 THE COURT: Except February and not in a leap year.

5 Q. So she asked to be paid for an additional four weeks per  
6 year?

7 A. She did not specifically say I want an additional payment  
8 per year. That's not correct.

9 Q. How is it that she calculated the upcharge?

10 A. She said I should be paid more than the 400 I'm asking for  
11 because when you move the 400 to 1600 a month it doesn't add up  
12 in the year. And she was able to say that she would be four  
13 weeks short in payment. It was a negotiation. This was not a,  
14 she didn't receive anything. This was in the context of a  
15 negotiation on salary, the conversation I've referred to in  
16 2004. She did not, she was not saying she hadn't received  
17 salary. We were talking about how much she should be paid.

18 Q. So up until -- this conversation was in the fall of 2004,  
19 is that correct?

20 A. If my memory is correct it's September, end of  
21 September-ish, October. And that's why her increased salary  
22 went into effect in January.

23 Q. You've described, you state in your affidavit -- I'll  
24 withdraw that.

25 By the time Ms. Upadhyay had come to live and work for

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S. Sethi - cross

1 you in Virginia, you had already earned a bachelors degree with  
2 high honors from Harvard University, correct?

3 A. Yes.

4 Q. And you were on the dean's list at Harvard, correct?

5 A. I believe I made dean's list.

6 Q. You were also Harvard University national scholar, meaning  
7 you were recognized as one of the top 50 students in the class  
8 of 1993, correct?

9 A. Mm-hmm.

10 Q. And you had also earned a medical degree from SUNY  
11 Downstate by then, correct?

12 A. That is all correct.

13 Q. And you received numerous academic awards and were in an  
14 honor society there as well, correct?

15 A. That's correct.

16 Q. And in addition, by the time Ms. Upadhyay had come to work  
17 for you, you had already completed a residency in dermatology  
18 at Duke University, correct?

19 A. I had not completed it.

20 Q. Had you started?

21 A. I had started one.

22 Q. And had you also had an internship at St. Vincent's  
23 Hospital in New York?

24 A. You are correct.

25 Q. By 1996 you had also successfully led and sold a startup

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S. Sethi - cross

1 company, is that correct?

2 MS. McKENNA: This is leading.

3 MS. TUMARINO: It's a very impressive resume.

4 THE COURT: Yes. I think I should just leave the  
5 bench.

6 Q. Yet you say that Mrs. Upadhyay had the clear upper hand  
7 when she came to work for you in November of 2003?

8 A. No question.

9 MS. TUMARINO: Okay. I don't have anything further.

10 MR. ALLOY: I just have a few questions.

11 I'd like to mark four exhibits which I believe are  
12 documents that I believe are already --

13 MS. TUMARINO: I have additional copies here.

14 MR. ALLOY: Oh, you do? Thank you. Let's start with  
15 July '05 and then March '07 and June '07 for the bank records.

16 MS. TUMARINO: Which one is which?

17 THE DEPUTY CLERK: July '05 is 29, March '07 is 30.

18 REDIRECT EXAMINATION

19 BY MR. ALLOY:

20 Q. I show you Defendant's Exhibit 29. I believe you've  
21 already discussed this exhibit. Do you recognize that  
22 document?

23 A. Yes, sir.

24 Q. That's a copy of your bank statements from July 27 through  
25 August 23, 2005?



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S. Sethi - redirect

1 A. Yes, sir.

2 Q. And that would be a bank statement that you'd refer to to  
3 confirm there had been a corresponding cash withdrawal to the  
4 analysis in Exhibit 27?

5 A. Yes, sir.

6 Q. I'm going to show you what's been marked as Defendant's  
7 Exhibit 30. Do you recognize that document?

8 A. Yes, I do.

9 Q. That's a copy of your bank statements from March 24, 2007  
10 through April 24, 2007?

11 A. Yes, sir.

12 Q. And this document was also used to confirm a corresponding  
13 cash withdrawal from Exhibit 7, correct?

14 A. Yes, sir.

15 Q. I'm going to show you what's been marked as Defendant's  
16 Exhibit 31. Do you recognize that document?

17 A. I do.

18 Q. And that's also your bank statement from June 26, 2007  
19 through July 25, 2007?

20 A. Yes, it is.

21 Q. And that was also used by you to confirm a cash withdrawal  
22 corresponding to Exhibit 7?

23 A. Yes.

24 Q. And I'm also going to show you what's been marked as  
25 Defendant's Exhibit 32. Do you recognize that document?

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S. Sethi - redirect

1 A. Yes, I do.

2 Q. And what is that document?

3 A. That document is a check made out in the name of Anu  
4 Upadhyay for the amount of \$3,000 reflecting payment for April  
5 and May salary.

6 Q. And there's also a corresponding line for this payment in  
7 Exhibit 7?

8 A. Yes, sir.

9 Q. Okay, thank you.

10 If you could turn briefly to Exhibit -- I'm sorry,  
11 I've been referring to Exhibit 7, but it's actually Exhibit 6.

12 A. Yes, sir.

13 Q. If the record could reflect my previous references to  
14 Exhibit 7 are all Exhibit 6. If you could look at Exhibit 6  
15 quickly, please?

16 A. Yes, sir.

17 Q. The first two line items on Exhibit 6, November  
18 '03-December '03 they total \$2,300 and the reference is a  
19 Wachovia check dated 12/28/03?

20 A. Yes, sir.

21 Q. If you could turn to Exhibit 3 of the binder. And the  
22 third page of Exhibit 3, Bates stamped D000003, do you see  
23 that?

24 A. Yes, sir.

25 Q. And there is a deposit on 12/29 in the amount of \$2,300.

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S. Sethi - redirect

1 Do you see that?

2 A. Yes, sir.

3 Q. What if anything do you believe that deposit refers to?

4 A. I believe that deposit refers to the total of the two  
5 checks that were referenced in the first two lines of the  
6 spreadsheet.

7 Q. Thank you. If you could turn back to Exhibit 6, please.  
8 Can you explain or clarify the last several payments of wages  
9 that were made to Ms. Upadhyay?

10 A. The last several months in 2007?

11 Q. Yes. And in particular, I'd like to draw your attention to  
12 Exhibit 31, which is your bank statement from June 26, '07 to  
13 July 25, 2007.

14 A. Yes, sir. May I explain?

15 Q. Yes, please.

16 A. Anu knew by December of 2006 that she had received her  
17 green card and she was then free to leave the country, because  
18 she had gotten her green card. She was not able to leave  
19 before then. So she knew in December 2006 that she wanted to  
20 go back to India. We had a conversation with her and said do  
21 you want to go immediately, we know you're dying to see your  
22 family. We would have made arrangements and taken care of the  
23 children. I was grateful to her that she said she would stay  
24 until my time in New York was done which was known six more  
25 months and she began planning for her return trip.

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S. Sethi - redirect

1           From that point forward, she took all of her salary in  
2 cash. She took two months salary in cash with a check written  
3 out to cash in March 2, 2007. I made a teller withdrawal for  
4 cash on April 20 reflecting her March salary, referencing the  
5 bank statements that you have referenced as Defendant's Exhibit  
6 31, a \$3,000 withdrawal was made on July 5, which actually paid  
7 for her thousand dollar bonus and her April salary and she told  
8 me to hold on to May and June and she would take that for us  
9 when she left. May salary of \$2,000 plus June salary of \$2,000  
10 plus \$6,000 that she withdrew from her bank account with Berry  
11 and Ronica and I'll explain how that got to us in a second,  
12 \$10,000 plus the \$500 for her first week's salary in July,  
13 because we paid that as well. I was very clear to pay her  
14 until the last day she worked were withdrawn on July 9 in a  
15 \$10,500 withdrawal and given to Anu. That was the day she was  
16 leaving for India.

17           The \$6,000 that I mentioned from her own account, she  
18 went to New Jersey on June 10. I believe it was referenced  
19 earlier. She made a withdrawal. Berry and Ronica, we didn't  
20 have as you can see by the numbers, we didn't have extra money  
21 staying around, Berry and Ronica sent us a check for that in  
22 that instance minus two months employer insurance, and we  
23 deposited the check and were able to give her the cash because  
24 they couldn't give her the cash on that day. So the \$10,500  
25 withdrawal on July 9, I believe that's the exact day she went

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S. Sethi - redirect

1 to the airport, was May's salary of 2000, June's salary of  
2 2000, \$6,000 from her own bank account and \$500 for the first  
3 week in July that she had worked.

4 Q. Thank you.

5 If you could turn to Exhibit 15 in the binder, please.  
6 Do you recognize any of the people in that picture?

7 A. I am able to recognize the lady in the white, blue and  
8 black striped sweater as Shaku.

9 Q. You're referring specifically to the woman who is standing  
10 second from the right?

11 A. Yes, sir.

12 Q. And how were you able to recognize that person as Shaku?

13 A. I met Shaku on at least two occasions in my own apartment.  
14 Anu associated with Shaku very often. Anu called Shaku and  
15 spoke of Shaku so often that my son, he joked to my  
16 mother-in-law and to me, my son used to call Shaku chaku, which  
17 means knife in India, because he heard the word so much. She  
18 was friends with Anu at the time. I met Shaku twice; once in  
19 our Payson apartment, once in the Sutton Terrace apartment. I  
20 remember her face clearly. From her lawsuit that I learned  
21 only through Anu and nobody else, and since I saw her twice in  
22 association with Anu, I was able to recognize her from this  
23 photo.

24 Q. If you could turn to Exhibit 5, please. Bates stamped  
25 D000117 and D000118.

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S. Sethi - redirect

1 A. Yes, sir.

2 Q. Do you recognize this document?

3 A. Anu brought to me bank account statements and spreadsheets  
4 given to her by Neeraj Sethi in the spring of 2007. She asked  
5 me to look through them and see if I could find anything wrong  
6 with them.

7 Q. Was Exhibit 5 one of the documents that Anu brought and  
8 showed to you in the spring of 2007?

9 A. I am pretty sure that this document is one of what she  
10 brought. I very clearly remember her bank statements and I'm  
11 pretty sure, we certainly discussed verbally the spreadsheet  
12 analysis Neeraj had done for her, and I'm pretty sure I can say  
13 that this is one of the things that I looked at to make sure  
14 that, she wanted me to make sure that all of the numbers added  
15 up, and she wanted me to go through her bank statements and  
16 make sure that there was no money missing.

17 Q. And if you could turn to Exhibit 4, the series of, we don't  
18 need to go through them all, these are a series of Chase Bank  
19 statements. Were any of these Chase Bank statements the  
20 documents that you were just referring to that Anu brought and  
21 showed to you in or around the spring of 2007?

22 A. Yes, sir and I remember, because when she handed me the  
23 pile it was a very thick pile and I thought it was going to  
24 take a very long time. It ended up that there had been very  
25 little activity in the account especially in the way of

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S. Sethi - redirect

1 withdrawals so it really didn't take very long at all. It was  
2 pretty straightforward.

3 Q. If you could take a look at Exhibit 3, showing you a series  
4 of Sovereign Bank statements. Do you recognize any of these  
5 documents in Exhibit 3?

6 A. Yes, sir. She brought me the whole stack.

7 Q. Have you ever seen an application by Anu for Medicaid?

8 A. Yes. What I saw specifically was a piece of paper about  
9 this big, bigger than a check, about this big. It had Anu's  
10 name, what I believe to be the address of the room that she  
11 rented for her Friday night and Saturday night, because she  
12 never slept with us on those nights. The room that she rented  
13 there, I assumed that was that address, and it was an  
14 application for Medicaid and it showed a weekly salary of \$100.

15 Q. And when did she show you this?

16 A. She showed me this when we were still living in Payson  
17 House. My education has been referenced. I have a very visual  
18 memory, so I can remember where we had conversations because I  
19 remember standing looking at it in the hallway in that  
20 apartment.

21 Q. And what if anything did you say to Ms. Upadhyay after she  
22 showed you the application?

23 A. I was shocked because even though I had never had a  
24 conversation with her about income taxes and I had never had a  
25 conversation with Berry about income taxes, I asked her, I said

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S. Sethi - redirect

1 how can you report a salary of \$100 a week? I am paying you so  
2 much more. And I was a little mad because ultimately it's  
3 taxpayer money, and I said don't you think somebody is going to  
4 cross reference this with your income taxes at some level some  
5 day somehow? And she said no. And the reason she got the  
6 Medicaid was because she was getting sick and she was starting  
7 to feel ill and she went out and applied for it. Completely on  
8 her own. I had nothing to do with the application process or  
9 the application or anything. I saw this after the fact.

10 Q. Did you help her find a doctor for her rheumatoid  
11 arthritis?

12 A. Absolutely not. Anu mentioned the Dr. Badlani. I never  
13 met Dr. Badlani. I believe he came to her through some of her  
14 friends. She had to find a rheumatologist in Queens. She knew  
15 that because she filed her application in Queens, with that  
16 Queens address from Friday and Saturday nights. I believe. I  
17 should not say exactly because I don't know. I did not find  
18 Dr. Georgescu for her. It was a two-hour commute to get there  
19 and I went on a couple of occasions with my children to get  
20 there, waiting in the waiting room to translate. I would have  
21 much rather she had gone to Bellevue because it was closer.  
22 She was not able to do that because she applied in Queens with  
23 a Queens physical address.

24 Q. Did you ever write checks made out payable to Berry, Sethi  
25 or Ronica Sethi for Ms. Upadhyay's wages?



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S. Sethi - redirect

1 A. I have never written a check to Neeraj or Ronica Sethi for  
2 Anu's wages, never.

3 MR. ALLOY: No further questions.

4 MS. TUMARINO: I just have a couple.

5 RECROSS EXAMINATION

6 BY MS. TUMARINO:

7 Q. Have you ever written a check to Neeraj or Ronica Sethi for  
8 Anu's taxes?

9 A. Absolutely.

10 Q. You have. And those were made payable to Neeraj and/or  
11 Ronica?

12 A. Yes. May I explain?

13 Q. No, I don't need an explanation. That was the question.

14 A. Never Ronica, always Neeraj.

15 Q. Always Neeraj?

16 A. Never wrote a check to Ronica. Always Neeraj.

17 Q. You said you saw the Medicaid application when you were  
18 living in Payson House, correct?

19 A. Yes, ma'am.

20 Q. And it reflected an address in Queens?

21 A. Yes, ma'am.

22 Q. And you said you believe it to be the address of a room she  
23 rented, is that right?

24 A. I believe it to be the address of the place she stayed on  
25 Friday and Saturday nights because she did not sleep at our

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S. Sethi - Recross

1 home on Friday and Saturday nights.

2 Q. Did you ask her where the address was?

3 A. At that moment?

4 Q. At any point.

5 THE COURT: I'm sorry, if the address said some street  
6 in Woodside, why would you ask someone where's Woodside? Is  
7 that what you want to know?

8 MS. TUMARINO: It's in Queens. No, she said she  
9 believes it to be the place she stayed. I'm trying to get a  
10 sense of where that belief is derived from, whether she had a  
11 conversation with the plaintiff about whether that was --

12 THE COURT: Okay, I didn't understand that was the  
13 question.

14 A. The plaintiff told me on many occasions about the room she  
15 rented, about the other nannies that stayed in that apartment,  
16 about how she actually took pots and pans from our home to use  
17 in her apartment.

18 Q. I'm sorry. The question was --

19 A. I'm sorry.

20 MS. TUMARINO: Could you read my question back?

21 (Record read)

22 Q. Did you ask her whether the address on her Medicaid  
23 application was a place where she stayed, according to you, on  
24 the weekend?

25 A. I did not at that very moment ask her that question

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1 standing in the hallway.

2 Q. Did you ask her didn't whether the address on the Medicaid  
3 application was the place where she stayed on the weekend?

4 A. Absolutely the answer is yes.

5 Q. And when was that?

6 A. Because all of her mail addressed to her from Medicaid,  
7 including letters from Dr. Georgescu that she asked me to read,  
8 and appointment letters and medical records, information came  
9 addressed to that address in Queens and she brought those to me  
10 with I assume the same Queens address on it because that's  
11 where they were mailed and asked me to interpret them and in  
12 those occasions I asked her where is this, and this is the room  
13 that she was renting.

14 Q. And that was the same address that was on the Medicaid?

15 A. I believe it to be so.

16 Q. You had to read those letters for her?

17 A. The letters from her physician, yes.

18 Q. And the letters from Medicaid?

19 A. Yes, she brought me her Medicaid mail which was not mailed  
20 to us directly because it was mailed to a Queens address and  
21 she brought them to me.

22 Q. You understand she can't read?

23 A. She cannot read fluent in English. I don't believe she can  
24 read a full sentence in English. However, she can read an  
25 address written in her diary, she knows how to go back to that

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1 place.

2 MS. TUMARINO: Move to strike as nonresponsive.

3 A. I do not believe she can read full sentences, but she can  
4 read names, proper nouns, street names, places.

5 THE COURT: Ms. Tumanaro, are you done? I have to  
6 just leave for like ten minutes. We have a swearing in  
7 downstairs if you're done.

8 MS. TUMARINO: I just have one quick thing.

9 Q. If you could turn to Plaintiff's Exhibit 2.

10 THE COURT: Okay. Sorry, we're going to take a break.  
11 You get one question when I get back. It should not be longer  
12 than 15 minutes.

13 (Recess)

14 BY MS. TUMARINO:

15 Q. Please refer to Plaintiff's Exhibit 2. You testified I  
16 believe that plaintiff handed you her bank statements sometime  
17 in the spring of 2007, is that right?

18 A. Yes, I did.

19 Q. And these were bank statements she had obtained -- do you  
20 know where she had obtained the bank statements from?

21 A. I definitely did. She obtained them from Neeraj Sethi.

22 Q. Looking at Plaintiff's Exhibit 2, are these the statements  
23 she showed to you? Starts with P0001, I believe?

24 A. I'm looking at the dates to see how far back these go.

25 THE COURT: I'm looking at statements --

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S. Sethi - Recross

1 MS. TUMARINO: Do they start with P00001, your Honor?

2 THE COURT: Which are in the name of Ronica Sethi and  
3 then later Neeraj Sethi or Ronica Sethi? These are not -- am I  
4 mistaken? Are these the plaintiff's statements?

5 MS. TUMARINO: These are the statements, these are,  
6 plaintiff's bank account was in these bank statements. The  
7 defendants -- well, let me just ask, if I could just ask the  
8 witness the question.

9 THE COURT: Okay.

10 Q. Are these the bank statements that the plaintiff showed to  
11 you? Do you recall?

12 A. I can recall if I look at them, but these stretch over a  
13 two-year period. The address changes during those two years,  
14 so I would need to look and see whether these are exactly the  
15 same statements that I just referenced in the defendant's --

16 MS. McKENNA: Could you keep your voice up? I can't  
17 hear you.

18 A. I would have to look and see, I'm happy to do that, if  
19 these are exactly the same statements.

20 Q. Maybe you could compare them to Defendant's Exhibit 4.

21 THE COURT: The plaintiff had the full bank records of  
22 Neeraj and Ronica, is that correct?

23 MS. TUMARINO: We don't know, your Honor. I'm just  
24 asking the witness what she saw. The full records of these  
25 bank statements -- well, if we could just ask the witness.

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S. Sethi - Recross

1 MS. McKENNA: Well, if the question is supposed to  
2 establish what these records are, I suspect that question is  
3 more properly put to Ronica Sethi. If the question is are  
4 these the documents that plaintiff showed to you --

5 MS. TUMARINO: That's the question.

6 MS. McKENNA: -- when she had the conversation, I  
7 believe the witness said she needs to look at them to ascertain  
8 the answer to that question.

9 MR. ALLOY: I also want to make sure, these documents  
10 are subject to the same confidentiality that we've previously  
11 discussed.

12 MS. TUMARINO: Only for the purposes of this case. I  
13 have no problem with that.

14 MS. McKENNA: Thank you. They will be used only for  
15 the purposes of this case.

16 MS. TUMARINO: That's correct.

17 A. So we referenced two exhibits.

18 Q. I'd like you to compare Plaintiff's Exhibit 2, which is  
19 what you're looking at, right, which starts at P00001?

20 A. Correct.

21 Q. And Defendant's Exhibit 4.

22 THE COURT: Excuse me, that wasn't the question.

23 Q. You can tell us whether the bank statements -- she said she  
24 needed to look at the bank statements to see whether they were  
25 the ones that were shown to her.

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1 THE COURT: Isn't there a more direct way of asking  
2 the question to learn the answer?

3 MS. TUMARINO: One way to be --

4 Q. Did the plaintiff show you Defendant's Exhibit 4 or  
5 Plaintiff's Exhibit 2?

6 MS. McKENNA: That suggests they are two different  
7 things. A plain looking, for example, at the first page of  
8 Defendant's Exhibit 4 and the first page of Plaintiff's Exhibit  
9 2, to my eyes they appear to be the same document.

10 THE COURT: Look, just to cut through this. Did the  
11 plaintiff show you bank records which contained pages such as  
12 33?

13 MS. TUMARINO: P33, your Honor?

14 THE COURT: Right.

15 THE WITNESS: Yes. I believe so.

16 Q. Did the record -- were you going to say something?

17 A. I'm going to say that what I testified to earlier was what  
18 Anu brought to me was very straightforward, easy to look  
19 through, because there weren't a lot of transactions. And the  
20 documents that are in Defendant's Exhibit 3 and 4 are very much  
21 the same. And that's why it did not take me a very long time  
22 because there wasn't a lot of activity.

23 Specifically, P33 references a whole lot of activity  
24 and I do not, I am not confident that that page is in  
25 Defendant's Exhibit 3 and 4.

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S. Sethi - Recross

1 Q. Okay. So the documents that she brought to you, the bank  
2 statements, had very little activity at all?

3 A. They did not have much activity. They did not -- she asked  
4 me to identify any missing money, any money that was withdrawn  
5 was her specific concern and I did not see any of that in the  
6 statements she brought to me. She had asked me to identify  
7 things that would have gone wrong or missing or that were  
8 deducted somehow.

9 Q. Okay, thank you.

10 THE COURT: Okay, I think that's your question.

11 MS. TUMARINO: I think that's it.

12 THE COURT: Anything further Mr. Alloy?

13 MR. ALLOY: No.

14 THE COURT: Thank you. You can go back to Texas.

15 (Witness excused)

16 MS. TUMARINO: We have no objection to Exhibit 3, but  
17 since Exhibit 4 is not the complete record we object on that  
18 basis and proffer Exhibit 2.

19 MR. ALLOY: I object. If I could briefly address  
20 this, because I've had this discussion with plaintiff's counsel  
21 before and this is very troubling to both me and to my clients,  
22 which is that what we have produced as Exhibit 4 are the  
23 complete records from Chase of the account in which  
24 Ms. Upadhyay was, Ms. Upadhyay's accounts. What plaintiffs  
25 have put forward as Exhibit 2 which we object to on a number of



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Hearing

1 grounds are the complete banking records of the Sethis during  
2 this time period, and my understanding is that they were  
3 obtained improperly. I'm not suggesting that plaintiff's  
4 counsel did anything improperly, but they were obtained  
5 improperly when plaintiff's counsel attempted to obtain  
6 Ms. Upadhyay's records from Chase. Chase mistakenly provided  
7 them with all of the Sethis records because Ms. Upadhyay's  
8 account was part of an umbrella account of the Sethis.

9 And so we certainly object on a number of grounds,  
10 including relevance as well as confidentiality to any of the  
11 Sethis' personal banking records, which really are not at issue  
12 in this case.

13 MS. TUMARINO: Your Honor, we could resolve this with  
14 a simple stipulation, which was that the plaintiff's bank  
15 account statements were commingled with defendant's bank  
16 account statements. They did not come separately or appear  
17 separately, and the relevance of the financial information  
18 pertaining to to the Sethis is not at issue. If defendants  
19 will stipulate to us, stipulate that plaintiff's bank account  
20 statements were part of a larger statement of defendants, then  
21 we should have no problem. The substance of -- with one  
22 additional fact which has been testified to by Dr. Sethi, that  
23 there was a transfer or a withdrawal of monies from plaintiff's  
24 account by defendant Ronica Sethi in order to give her those  
25 monies. As long as those -- because that's not clear from

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Hearing

1 defendant's own records of plaintiff's account.

2 MS. McKENNA: Your Honor, with respect to the latter  
3 issue raised by counsel, the testimony is quite clear with  
4 respect to what withdrawals were made and why. I feel no need  
5 to stipulate anything with respect to that.

6 Second, with respect to the Chase Manhattan Bank  
7 accounts, the testimony is clear and Defendant's Exhibit 4  
8 makes clear that the plaintiff had an account with Ronica  
9 Sethi, first in Ms. Sethi's name and then in their names  
10 together, joint holders of that account. To use the expression  
11 commingled with other accounts, the Sethis had an incorrect  
12 statement.

13 The banking records of the Sethis that have nothing to  
14 do with the plaintiff are not at issue here. What is at issue  
15 is the way plaintiff was paid into an account in the name of  
16 Ronica Sethi and then in the name of Ronica Sethi and herself  
17 and that is that single account which is Defendant's Exhibit 4.

18 THE COURT: Ms. Tumanaro, there's no suggestion, I  
19 gather, that there are portions of Exhibit 2 which relate to  
20 the plaintiff that are not included in Exhibit 4.

21 MS. TUMARINO: The only thing that is not included --  
22 well, there are portions of Exhibit 2 that are not included in  
23 the sense that Exhibit 4, Exhibit 4 doesn't reflect the fact  
24 that Ms. Upadhyay's bank statements came in a statement of all  
25 the Sethis.

C52FUPAH

Hearing

1 THE COURT: That's not what I'm saying.

2 MS. TUMARINO: The one --

3 THE COURT: Are they cheating when they say the  
4 Exhibit 4 reflects the transactions that are relevant to the  
5 plaintiff?

6 MS. TUMARINO: No. There is only one way in which  
7 Exhibit 4 doesn't reflect -- there's a \$6,000 transfer to  
8 another account of the Sethis that there's been some testimony  
9 about. In June of 2007, and it doesn't -- because it's not  
10 Plaintiff's 2, you don't see that those monies go into  
11 defendant's account. But other than that, since that doesn't  
12 appear to be at issue, the main issue here is that plaintiff's  
13 bank account statements came as part of a summary statement of  
14 all accounts under the Sethis' name. It was not an individual  
15 bank statement, one that would be easy, for example, to pass  
16 along to plaintiff.

17 MS. McKENNA: Obviously it would be easy to pass along  
18 to plaintiff because Defendant's Exhibit 4 is exactly that.  
19 She had an account. These are the pages of that account. I  
20 don't know what the relevance is to the other issue that  
21 counsel is raising.

22 MS. TUMARINO: Defendants have redacted information  
23 from the pages so it is just plaintiff's -- the joint account  
24 in plaintiff's and Ms. Sethi's name, but other than that, it is  
25 not an accurate reflection of what the statements look like.

C52FUPAH

Hearing

1 MS. McKENNA: Your Honor, if I could know what we're  
2 trying to establish, I would try to help.

3 THE COURT: There's no testimony by the plaintiff that  
4 she ever asked the Sethis to see her bank account statements  
5 and the Sethis refused to show them to her, right?

6 MS. TUMARINO: Nor is there testimony --

7 THE COURT: Her testimony is I don't know about bank  
8 account statements, therefore it doesn't really matter --

9 MS. TUMARINO: Your Honor --

10 THE COURT: Whether they were more complex or simpler,  
11 because she is asserting that she has no concept of a bank  
12 account.

13 MS. TUMARINO: She's not asserting that, your Honor.  
14 She's asserting that she never got bank account statements from  
15 the defendant.

16 THE COURT: But she isn't stating that she ever asked  
17 for them.

18 MS. TUMARINO: Exactly. She didn't say she asked for  
19 them. She also didn't state that she received them.

20 THE COURT: Okay. So what's the issue? If she didn't  
21 ask for them, the form that they're in is not important.

22 MS. TUMARINO: Plaintiff's Exhibit 2 makes it look  
23 unlikely that defendants would have just turned over statements  
24 to her every month.

25 THE COURT: And I don't believe that the defendants in

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Hearing

1 their affidavit said that they gave her bank statements  
2 monthly.

3 MS. TUMARINO: They haven't said that, your Honor, but  
4 Dr. Sethi just testified that plaintiff came to her with a pile  
5 of bank statements.

6 THE COURT: Okay. She said that she came to her with  
7 something approaching Exhibit 4, not something approaching  
8 Exhibit 2.

9 MS. McKENNA: And I would note, your Honor, that  
10 counsel could have had the opportunity to explore with the  
11 witness on cross-examination why that was so and why that came  
12 up, and chose not to do it.

13 THE COURT: The whole point, I think the bottom line  
14 is at some point the plaintiff asked to see bank statements and  
15 the plaintiff was given bank statements and the plaintiff at  
16 that time, at least, I think felt sufficiently comfortable with  
17 Dr. Sethi to ask her to verify whether there was any wrongdoing  
18 with respect to the bank statements. I think that's where we  
19 are.

20 MS. McKENNA: Should we call our next witness?

21 THE COURT: Yes, please.

22 MR. ALLOY: Plaintiff calls Neeraj Sethi, please.

23 NEERAJ SETHI,

24 called as a witness by the Defendant,

25 having been duly sworn, testified as follows:

C52FUPAH

Hearing

1 DIRECT EXAMINATION

2 BY MR. ALLOY:

3 Q. You previously submitted an affidavit in this case dated  
4 June 15, 2011, correct?

5 A. Correct.

6 Q. I'd like to show you -- and you've also submitted what I  
7 will call an updated affidavit recently dated April 16, 2012,  
8 correct?

9 A. Correct.

10 Q. Let me show you both of your affidavits. If you could look  
11 at your 2011 affidavit first. Do you recognize that document?

12 A. I do.

13 Q. And approximately on page 5, is that your signature?

14 A. It is.

15 Q. Did you sign that document in the presence of a Notary  
16 Public?

17 A. I did.

18 Q. And when you signed that document you understood that you  
19 were attesting that the statements contained in your affidavit  
20 were true?

21 A. Yes.

22 Q. And if you could take a look at -- oh, I'm sorry. Who  
23 wrote that document, your 2011 affidavit?

24 A. I did.

25 Q. Those are your words?

C52FUPAH

N. Sethi - direct

1 A. Those are my words.

2 Q. If you could take a look at the most recent 2012 affidavit.  
3 Do you recognize that document?

4 A. I do.

5 Q. And is that your signature at the back of the document?

6 A. It is.

7 Q. And was that also signed in the presence of a Notary  
8 Public?

9 A. It is.

10 Q. When you signed that you also understood that you were  
11 attesting to the truth of the matters within your affidavit?

12 A. Yes.

13 Q. And this most recent affidavit incorporates your prior  
14 affidavit and adds some additional statements?

15 A. That is correct.

16 Q. And those additional statements, are they also your words?  
17 Excuse me. Did you also write this most recent updated  
18 affidavit?

19 A. I absolutely did.

20 Q. Thank you.

21 MR. ALLOY: No further questions.

22 CROSS-EXAMINATION

23 BY MS. TUMARINO:

24 Q. Good afternoon, Mr. Sethi, my name is Amelia Tumanaro. I'm  
25 attorney for the plaintiff.

C52FUPAH

N. Sethi - cross

1 A. Good afternoon.

2 Q. Ms. Upadhyay started working for you in December 1998,  
3 correct?

4 A. Correct.

5 Q. At that time she didn't have a bank account, correct?

6 A. Not to my knowledge.

7 Q. And because she was new to this country, you and your wife  
8 assisted in getting her work authorization, correct?

9 A. When you say new to the country, she was in the country for  
10 three years already.

11 Q. So she had been here for three years, you were helping her  
12 to get work authorization when she came to you, correct?

13 A. That is not correct.

14 Q. Can you explain?

15 A. Yes. We started applying for a work authorization when  
16 there was a newspaper article that came out Chellaram's wife  
17 Vimi gave it to my wife. We still have the article. I think  
18 was New York Times, it was February 2001. There was an amnesty  
19 ruling and that's when we decided to file for Anu's green card  
20 under that amnesty program.

21 Q. And you did this without deducting any of the costs of this  
22 from Anu's pay, correct?

23 A. That is correct, and I think she testified to that as well.

24 Q. And during the time Ms. Upadhyay worked for you, she  
25 couldn't read or write in English or in Hindi, correct?



C52FUPAH

N. Sethi - cross

1 A. Selectively, she could absolutely read. She could  
2 absolutely read her name. She could absolutely spell her name  
3 and I think today when Josh showed her her Social Security card  
4 how did she know it was hers? Because she could read her name.

5 Q. So she could read her name?

6 A. And she could speak selective words. She could definitely  
7 have a communication. She could go to the grocery store, buy  
8 groceries. And even drop off my dry cleaning.

9 Q. Because plaintiff didn't have a bank account, she asked you  
10 to keep money for her and send it to India upon her request,  
11 correct?

12 A. That is correct. I offered to pay her every 15 days. She  
13 said, "What am I going to do with it? Where am I going to keep  
14 it? If you can keep it for me and every time I ask it if you  
15 send it to my children or my husband," and she gave me a piece  
16 of paper which I presented earlier on which had her husband's  
17 name and bank account information and her son Ashok Upadhyay's  
18 name and bank information and that's how I transferred the  
19 money. I would send it by check in the initial days and  
20 typically it was always a round number, 3,000 or so, sometimes  
21 4,000 that I would send a check.

22 Later on there was some issues with one of the checks,  
23 it took a long time to clear. I remember very clearly because  
24 her son called and said, "What happened? Why is this money not  
25 come?" And I said hey the bank's deducted it from me. It's

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N. Sethi - cross

1 the issue of the Indian bank having to convert it into rupees  
2 and back, then it would take a really long time to do. I think  
3 you can talk to any banking people would tell you the same  
4 thing. It was a long time for international check to clear in  
5 India especially. Because back then in India, all the banking  
6 laws was in what you call a ledger format. It was not  
7 computerized.

8 Q. And how often did Ms. Upadhyay ask you to send money to  
9 India?

10 A. Every three months or so. I remember sending thousands,  
11 tens of thousands of dollars over the four and a half, five  
12 years she worked for us.

13 MS. TUMARINO: Your Honor, I'm going to move to strike  
14 the last portion of that answer.

15 THE COURT: Okay. Granted.

16 Q. At the time Ms. Upadhyay worked for you and Ronica Sethi  
17 you kept a ledger, correct?

18 A. That is correct.

19 Q. And in that ledger you kept track of what you referred to  
20 as Anu's balance, is that right?

21 A. That is correct.

22 Q. And the balance was an accounting of her calls to India,  
23 checks to India, wire transfers to India and cash paid to her,  
24 is that right?

25 A. In the early days I told her very carefully that --

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N. Sethi - cross

1 Q. I'm sorry, that's a yes or no question.

2 A. I'm sorry, could you repeat the question again?

3 Q. The balance was an accounting of her calls to India, cash  
4 given to her, checks given to her and wires sent to India,  
5 correct?

6 A. That is correct.

7 Q. And presumably it also contained dates corresponding to  
8 those transactions, correct?

9 A. That is correct.

10 Q. And the ledger would have also included amounts of those  
11 checks and wire transfers and cash payment, correct?

12 A. That is correct.

13 Q. Besides these items, the cash, the checks and the wire  
14 transfers and the calls to India, were there any other  
15 notations in the ledger pertaining to Anu's employment?

16 A. No.

17 Q. And did you deduct the cost of the calls to India from her  
18 pay?

19 A. No.

20 Q. And when did you start making this ledger?

21 A. From the day she started. I believe it is December 1,  
22 1998.

23 Q. And did anyone else make entries in the ledger?

24 A. No.

25 Q. Did you stop making entries in the ledger when she went to

C52FUPAH

N. Sethi - cross

1 work for Shikha and Ganesh?

2 A. Yes.

3 Q. I'm sorry, I should have asked you, did you continue making  
4 entries in the ledger for the duration of Ms. Upadhyay's  
5 employment for you and Ronica Sethi?

6 A. I only made those entries in the ledger until she worked  
7 for us in 2003. Once she went to work for Shikha and Ganesh I  
8 did not make any more entries in the ledger.

9 Q. When in 2003 did she stop working for you?

10 A. I think it was about October '03.

11 Q. And was the ledger an actual book?

12 A. It was actually the back of a checkbook. And it went on to  
13 multiple pages because I ran through that pretty quickly and  
14 then I had to carry on.

15 Q. You had to carry on, you said?

16 A. Yes. I had to. Sometimes when I ran out of my checkbook  
17 for the back, it would start at the back. If you look at the  
18 back of a checkbook, it has the date what check you wrote. You  
19 have a memo, a debit and a credit field. So when I ran through  
20 the page I used the next page, but that's more for writing a  
21 check. So I would take another checkbook and then I started  
22 doing that and I kept that checkbook specifically for all the  
23 accounting for Anu.

24 Q. So were there two ledger books?

25 A. There was one ledger book that continued on to the other

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N. Sethi - cross

1 and I stapled it to the other one. So this continues.

2 Q. And just to be completely clear, the checks sent to India  
3 for Anu, those were to her wages, correct?

4 A. Absolutely.

5 Q. And the same question for the wires, those were also  
6 payment of her wages?

7 A. Absolutely.

8 Q. How long did you keep the ledger book after you stopped  
9 making entries?

10 A. I don't know. I don't remember throwing it away. It's  
11 somewhere, somewhere, it's just somewhere in the house  
12 somewhere. We moved from the house in '03 to New Jersey. I  
13 remember still having it, and then after she stopped working  
14 for us, I mean, it wasn't material, not for me to keep on  
15 keeping it because I paid her everything and all the money in  
16 the later years, once she had a Social Security number, she  
17 could open a bank account, we opened the bank account for her  
18 all her money was in the bank account that was remaining.

19 Q. So about how long after she moved to work for Shikha and  
20 Ganesh did you keep the ledger?

21 A. I have no idea. Let me ask you a question. How long do  
22 you keep stuff from five years ago?

23 Q. You don't get to ask questions, Mr. Sethi.

24 A. I'm sorry.

25 THE COURT: You've got to go to law school first.

C52FUPAH

N. Sethi - cross

1 Q. So you said you have no idea how long you kept it. Did you  
2 still have the ledger after Anu stopped working with Shikha and  
3 Ganesh?

4 A. I don't know.

5 Q. Did Ms. Upadhyay ever give you cash to deposit in the bank  
6 from her massage work?

7 A. Not even once.

8 Q. Were you present when your wife opened an account, a joint  
9 account for her and Ms. Upadhyay?

10 A. No.

11 Q. On either occasion?

12 A. No.

13 Q. Have you ever endorsed checks for Anu within the bank?

14 A. No.

15 Q. Could you turn to Defendant's Exhibit 8? The second page  
16 of that, which is D000135.

17 A. 135?

18 Q. D000135.

19 A. Yes.

20 Q. Do you recognize that handwriting?

21 A. No.

22 Q. We'll turn to D000138. Do you recognize that handwriting?

23 A. It's the same handwriting on the passbook.

24 Q. My question was do you recognize the handwriting?

25 A. I said I do recognize the same writing as Anu's writing on

C52FUPAH

N. Sethi - cross

1 the passbook.

2 Q. So this is Anu's handwriting?

3 A. Exactly.

4 Q. Could you turn to D000140? Do you recognize the  
5 handwriting on the back of that check?

6 A. Yes, I do.

7 Q. Whose handwriting is that?

8 A. That's my wife.

9 Q. And where it says Anu, is that your wife's handwriting?

10 A. I don't know about that. I know my wife's signature at the  
11 bottom.

12 Q. Can you turn to D000142? Do you recognize who wrote the  
13 word Anu there?

14 A. I don't know who wrote the word Anu, but I know my wife's  
15 handwriting because she writes her name.

16 Q. And D000144? Do you recognize who wrote Anu there?

17 A. No.

18 Q. Did you make deposits for Anu into the bank account of  
19 checks paid by Shikha Sethi and Ganesh Raj?

20 A. No.

21 Q. Did Anu ever give you cash from her massage work to wire to  
22 India?

23 A. Never.

24 Q. After Ms. Upadhyay got her Social Security number you  
25 started reporting and paying the required state and federal

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N. Sethi - cross

1 taxes on your payments to her, is that correct?

2 A. Actually, I was going through my records and I, first time  
3 I declared paying as an employer paying for her taxes and  
4 paying the employer taxes was in the year 2000.

5 Q. And --

6 A. I'm not sure when she got her Social Security card. But  
7 that's the first year I filed on my tax return, I remember  
8 there's a special schedule H to be exact, if I remember  
9 correctly, that had for employment, employer taxes or household  
10 taxes.

11 Q. In paragraph 7 of your affidavit you say, "When Anu first  
12 received a Social Security number we immediately began  
13 reporting our payments to Anu and reported and paid state and  
14 federal taxes." Would that have been 2000?

15 A. No.

16 Q. So you don't remember when Anu received her Social Security  
17 number?

18 A. I don't. I thought we started doing it when she got her  
19 Social Security number but the other day I came across a piece  
20 of paper from the IRS that said, they asked a question that we  
21 filed a schedule H and this paper was dated October 2001, and  
22 it said that here is your EIN number for your taxes that you  
23 should reference, next time you pay employer taxes you should  
24 reference that EIN number on it.

25 Q. So you didn't apply for an EIN number?



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N. Sethi - cross

1 A. We got it through, like I said, I filed my 2000 tax  
2 returns. It had a schedule H and in October of 2001 I got the  
3 letter. I'm sure my accountants applied for it on my behalf,  
4 but that's the letter I got from the IRS and I still have that  
5 letter.

6 Q. And you also say in your affidavit that after you started  
7 reporting your wage payments you started receiving copies of  
8 wage hour posters rules and regulations, correct?

9 A. That is correct.

10 Q. And so that would have been in what year?

11 A. I don't remember exactly what year. My guess is late 2001,  
12 probably 2002. It had to be after I got the EIN because that's  
13 something that would normally trigger something like that.

14 Q. And who sent you the relevant wage hour posters?

15 A. I don't remember exactly how I got them, if I ordered them  
16 or if they came. But I do remember them coming in the mail and  
17 I do remember discussing it with Anu because the key thing I  
18 remember is telling her, see what they do in this country.  
19 They actually send every business a poster that you got to put  
20 up that shows the minimum wage for every employee. So every  
21 employee is aware of their rights and what their minimum wage  
22 is.

23 And also I remember that and I remember discussing  
24 very clearly with her. I never put it up because I didn't know  
25 we had to put that up in my house. I only thought businesses

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N. Sethi - cross

1 had to put it up. But the fact remains that Anu, there's no  
2 way she could have read or understood if I put it up what that  
3 poster meant.

4 Q. Why is that?

5 A. She can't read English that fluently. She's very selective  
6 in her reading. There's some words she can understand and some  
7 words she can read because she definitely can find her way  
8 around town.

9 Q. Did you have a conversation with your wife about whether or  
10 not to post the notice?

11 A. I don't think so. I don't remember.

12 Q. Can you describe the poster that was sent to you?

13 A. Absolutely. There were two different types of posters. I  
14 remember the Fed poster is a much bigger poster if I remember  
15 correctly. The key thing in the poster was the minimum wage.  
16 The Fed poster, I remember it clearly because it's part of my  
17 nature of my job is overtime is for anything hours worked over  
18 40 hours. Anu in the first place was never hired to work  
19 overtime. The New York State poster, which is a one-pager,  
20 talked about the same thing. It had a minimum wage on it and  
21 it also said that if you work for residential or household, I'm  
22 not sure of the exact word, it said 44 hours. Anything you  
23 worked over 44 hours would be considered overtime.

24 Q. And it said that on the New York State poster?

25 A. That is correct.

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N. Sethi - cross

1 Q. And if you worked anything over 44 in the home.

2 A. If you worked for anything in the home for over 44 hours it  
3 was considered overtime. But overtime was never an issue  
4 because we never hired Anu to work overtime. I think she made  
5 it very clear that she worked, she was doing a lot of massages  
6 and all the income she reported from the massages there's no  
7 way she could have been working overtime for us and manage the  
8 massage business as well.

9 MS. TUMARINO: Your Honor, I'm going to move to strike  
10 the last answer. It's not responsive.

11 THE COURT: Granted.

12 Q. The federal overtime was bigger. What does that mean  
13 bigger? What size was it?

14 A. I said the federal poster was bigger, not the overtime.

15 Q. I'm sorry I misspoke. The federal poster was bigger. How  
16 big was it?

17 A. If I remember correctly it was this big by this big.

18 Q. So about three feet by two feet?

19 A. Sounds about right.

20 Q. Three feet wide by two feet high?

21 A. Yes. Because I remember folding it and putting it back in  
22 a folder.

23 Q. And the New York State poster you described as a one-pager.  
24 Was that in --

25 A. Yes, standard --

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N. Sethi - cross

1 Q. Eight and a half by eleven piece of paper?

2 A. Yes.

3 Q. And you said you don't remember who sent them to you?

4 A. I don't remember exactly. They probably came from the  
5 State. Or if I ordered them from a separate place I'm not  
6 sure, I don't remember the exact details. That was a very long  
7 time ago. Over ten years ago.

8 Q. Did the posters come from the same place?

9 A. No.

10 Q. They came separately?

11 A. They came separately. They came at separate time because I  
12 remember those we had two separate discussions then the posters  
13 came.

14 Q. You stated that you didn't know you had to post it in your  
15 home, is that right?

16 A. That is correct.

17 Q. You mentioned a minute ago that you had two separate  
18 discussions when the posters came. Can you describe for me  
19 when did the first discussion happen?

20 A. I think the first discussion probably happened, it's  
21 probably late 2001 or early 2002. Both those discussions  
22 happened within three months of each other. And I can go into  
23 the discussions if you like.

24 Q. Just not yet. And the second discussion, when did that  
25 happen?

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N. Sethi - cross

1 A. I said within three months.

2 MS. McKENNA: Asked and answered.

3 Q. So somewhere in early 2002, is that fair?

4 A. Yes.

5 Q. And where were you seated during the first -- where were  
6 you during the first --

7 A. On both places I was sitting on my dining table, because I  
8 spread them out on my dining table for her.

9 Q. And on the first, during the first discussion, you're at  
10 the dining table, what time of day?

11 A. It was in the evening, pretty late in the evening, about 7,  
12 7:30 around there, because I would probably get home around  
13 that time.

14 Q. Was this before dinner or after dinner?

15 A. I don't know.

16 Q. Was anyone -- who was present during this conversation?

17 A. It was Anu and me.

18 Q. And the first discussion, did you translate one of the wage  
19 hour notices in the first discussion?

20 A. Yes, I did.

21 Q. And which one was that?

22 A. It was, I believe the federal one.

23 Q. And you were looking at the notice as you translated it?

24 A. Yes.

25 Q. And you translated it into Hindi, is that correct?

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N. Sethi - cross

1 A. That is correct.

2 Q. Did you translate everything on the notice?

3 A. No. There were a lot of irrelevant sections in there that  
4 I did not translate. The only thing I translated was what  
5 minimum wage she was entitled to and what the overtime  
6 conditions were.

7 Q. And what were the overtime conditions?

8 A. That if she worked -- on the federal one, if I remember  
9 correctly, it is over 40 hours. If she worked over 40 hours.  
10 I remember this very clearly, because I told Anu, in this  
11 country, I said -- I can speak in Hindi if you like and I can  
12 translate --

13 Q. I don't understand Hindi.

14 A. So the gist in English is see what they do in this country,  
15 they actually, all employers, businesses have to put a notice  
16 up that shows what the minimum wage is. I said can you ever  
17 imagine something like that in India? Because that's something  
18 typically they don't have that in India. And I remember saying  
19 that this was the -- when I explained the federal one, I said  
20 this is the central government, because she understands that,  
21 or part of the government and she also understands state  
22 government because she understands states like Maraj (ph),  
23 Garav (ph), so the New York State ones I explained that to her.

24 Q. Was that part of your second conversation?

25 A. The state government was the second conversation. Also in

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N. Sethi - cross

1 the first conversation when I explained the IRS poster to her I  
2 told her this is from the Fed or the central government and the  
3 states have different requirements. And I remember her  
4 response also being I don't understand any of this, why are you  
5 telling me all of this.

6 Q. You say you recall on numerous occasions explaining the  
7 wage hour laws including minimum wage and overtime to Anu,  
8 correct?

9 A. That is correct.

10 Q. And other than -- why did you explain it on numerous  
11 occasions?

12 A. Because she brought up her wages on so many occasions. She  
13 would talk to nannies, she'd say so-and-so is making so much,  
14 so-and-so is making so much and I also remember having a  
15 discussion with her explaining the difference between a live-in  
16 rate and a live-out rate. She's very, very money minded.

17 Q. You also state that you tried to show her she was making  
18 more than the minimum wage before taking any allowances for  
19 meal and lodging, correct?

20 A. That is correct.

21 Q. So is it fair to say that if you hadn't been, if -- so is  
22 it fair to say you were taking meal and lodging allowances?

23 MS. McKENNA: Objection.

24 A. Absolutely not.

25 Q. You were not taking meal and lodging allowances?

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N. Sethi - cross

1 A. No. I was saying those are just benefits on top of that.

2 Q. Did you also pay for Workers' Compensation while  
3 Ms. Upadhyay was employed by you?

4 A. I don't remember exactly, but I remember paying the  
5 unemployment -- I'm not sure if it included Worker's Comp or  
6 not, I can't recall.

7 Q. Did you pay disability insurance for Ms. Upadhyay?

8 A. I don't know. I'll have to check with the accountant and  
9 see what was all on there. I don't remember the exact facts.

10 Q. So your accountant handled this for her?

11 A. No, he did not handle that for me. I sent the checks after  
12 when I was employed -- when she was employed by us. I sent the  
13 checks, I made the, what do you say, the payments to the  
14 State -- yes, my accountant did send me the forms, correct. I  
15 do recall that now. I still have some of those forms. Even  
16 though the State would send you the booklet, here's the minimum  
17 amount you have to do, but my accountant would file my  
18 quarterly wage payments I had to pay for Social Security  
19 Medicare and unemployment.

20 Q. When Ms. Upadhyay worked for Shikha Sethi she gave you cash  
21 for her taxes, correct?

22 A. Never. Anu has never given me a dime till today. Not even  
23 one dime. And the fact that you say that she paid for my --

24 Q. There's no question pending right now. You've answered the  
25 question.



C52FUPAH

N. Sethi - cross

1 I'd like you to turn to Defendant's Exhibit 5, please.

2 Do you recognize this document?

3 A. Yes, I do.

4 Q. And can you describe for us what it is?

5 A. It's a document that was created approximately in about  
6 March, April of '06. It was when Anu was complaining about  
7 some of the checks that were given by Shikha. She was  
8 complaining that Shikha hadn't paid her all the money, and so  
9 she asked me to do a reconciliation that can you show me that  
10 all the checks that Shikha has given have been deposited in the  
11 account, and so I went and asked my wife to actually go get  
12 bank statements from Sovereign Bank, that's where the original  
13 account was, and then she also got bank statements from Chase.  
14 I remember she having to go and pay five dollars a statement  
15 for every statement she had to go get from Sovereign Bank, and  
16 basically I showed how her balance built up and I showed it on  
17 one page, the idea was on one page I could show her all the  
18 checks given to her by Shikha were actually deposited in the  
19 account. I could show her how much interest she had earned and  
20 I could also show how much interest she earned when we moved  
21 her over to the Chase account.

22 Q. Anu started working for Shikha Sethi in or about  
23 November 2003, correct?

24 A. That's about right.

25 Q. Are there any other pages to this document other than the

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N. Sethi - cross

1 two that are in Defendant's Exhibit 5?

2 A. That is it. The only other things that was along with this  
3 was actual copies of all the bank statements, because I gave  
4 the second page on Exhibit 5 and the bank statements to Anu.  
5 She said she wanted them. I said absolutely, you can have  
6 them.

7 MS. TUMARINO: I'm going to move to strike the last as  
8 non-responsive. The second half of the answer.

9 MS. McKENNA: Objection, your Honor. I think he was  
10 asked is there any other part of this, he said there are  
11 statements that back it up.

12 THE COURT: I'm going to deny that.

13 Q. On the first page D000117, do you see there's a little  
14 snapshot where it says Anu XLS properties at the upper left,  
15 correct?

16 A. Yes.

17 Q. And there are two columns there, the bottom column where it  
18 says "origin," do you see that?

19 A. Don't have my glasses with me.

20 Q. It's hard to read.

21 A. Yes. I see that.

22 Q. It says date last saved, 5/30/2007, 11:56 a.m. Do you see  
23 that?

24 A. Yes.

25 Q. And there's a check next to that date last saved box. Do

C52FUPAH

N. Sethi - cross

1 you see that there? There's some kind of mark in the box,  
2 there are marks on some of the boxes in the far left?

3 A. I see some marks. There appear to be marks in a lot of the  
4 boxes.

5 Q. Do you know what those mean?

6 A. I have no idea.

7 Q. Next to that it says date created, do you see that?

8 A. I see that also.

9 Q. 3/25/2006?

10 A. I believe so.

11 Q. And that box is not checked?

12 A. That is correct.

13 Q. You don't know what that means?

14 A. No idea.

15 Q. Now, this summary begins in December of 2004, correct?

16 A. That is correct.

17 Q. And you say that you looked at Ms. Upadhyay's Sovereign and  
18 Chase Bank statements in creating this statement, correct?

19 A. That is correct.

20 Q. You input the information you found on the bank statements  
21 and put it into this document?

22 A. That's correct.

23 Q. You personally did that?

24 A. Correct.

25 Q. The first entry is December 31, 2004, correct?

C52FUPAH

N. Sethi - cross

1 A. That is correct.

2 Q. And you reflect a \$4,000 deposit.

3 A. That is correct.

4 Q. Was this in her Sovereign account or her Chase account?

5 A. That is the Sovereign account.

6 Q. Could you please turn to Defendant's Exhibit 3? And turn  
7 to page D000036.

8 A. 36?

9 Q. Yes.

10 A. Yes.

11 Q. And that's the statement for November 2004 to  
12 December 2000 -- December 16, 2004, correct?

13 A. That is correct. From November 17 to December 16.

14 Q. Okay. And there are no deposits in that time, right?

15 A. Not in that time, but the next month from December 17 to  
16 January 17 of '05 there is there is a deposit of 4,000.

17 Q. And that's reflected in your spreadsheet here in the top  
18 row, right, for December 31, 2004?

19 A. That's right.

20 Q. There's also some interest she earns in that time period,  
21 right?

22 A. There is some interest, yes.

23 Q. On December 16 she earned \$12.16 and then on January 14 she  
24 earned \$16.37?

25 A. That's right.

C52FUPAH

N. Sethi - cross

1 Q. The next entry for January '05 reflects \$4,000 into her  
2 account. Can you tell me what the source of that information,  
3 where the source of that information comes from?

4 A. Right now I don't remember. I'll have to go through all  
5 the records and see what happened.

6 Q. Well, this is January 14, 2005, correct?

7 A. So I think that actually came from a deposit on March 7th,  
8 '05.

9 MS. McKENNA: D000045.

10 Q. So is it fair to say that's a typographical error in your  
11 spreadsheet, that that should correspond to March '05?

12 A. That is correct.

13 Q. And the, she earned some interest in February of '05,  
14 correct?

15 A. Yes.

16 Q. And the interest you have on your spreadsheet is \$14.70,  
17 correct?

18 A. Yes. I was trying to be not exact. It was 14.86, I put  
19 down 14.70, yes. I was trying to get to the gist of it and not  
20 worrying about pennies. Her concern was about thousands of  
21 dollars, six to \$7,000 was the original complaint, so I was  
22 trying to get to that so I wasn't focused on the pennies.

23 Q. I understand. Where did you arrive at the interest numbers  
24 here?

25 A. I used the interest numbers from the bank here. It says

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N. Sethi - cross

1 14.86. I put down 14.70. I didn't think there was a  
2 difference of 16 cents.

3 Q. So you rounded down to 14.70?

4 A. No, they're not rounded numbers.

5 Q. On March 14 of '05 it says 15.10 is the interest on your  
6 spreadsheet, D000118.

7 A. So I probably made up the difference between February,  
8 because if you look at the actual statement in March it says  
9 14.47, so I probably covered up for the other ones by being  
10 conservative.

11 Q. And then is it fair to say you did the same thing the  
12 following month? Where the interest is --

13 THE COURT: I don't think this case is about interest  
14 earned, so we need to move this along.

15 MS. TUMARINO: Certainly.

16 Q. If you'll turn to January, turn to Defendant's Exhibit 4,  
17 the first page, D000075.

18 A. Yes.

19 Q. It reflects there on your spreadsheet, it reflects a \$3,200  
20 deposit, is that right?

21 A. It does.

22 Q. And what is the date of that deposit?

23 A. 1/24.

24 Q. And is that, the 3200 on your spreadsheet, does that belong  
25 with January of '06?

C52FUPAH

N. Sethi - cross

1 A. What you're referring to as D00075 is not Anu's account.

2 Q. It's not?

3 A. I'm not sure. I can't read the account number on that. I  
4 don't see Anu's name on it.

5 Q. Well, it's account number 100612826001. The name on the  
6 account is Ronica Sethi. And the next few pages all pertain to  
7 the same account with the same name, Ronica Sethi and the same  
8 account number.

9 A. Because I remember the statement that came in Anu's name  
10 used to be on that account.

11 MS. McKENNA: You have to wait for a question. We  
12 don't have a question yet.

13 THE WITNESS: Sorry.

14 Q. So you're saying that the statement that we're looking at,  
15 D000075 is not Anu's account?

16 A. I don't know. I remember seeing Anu's statement with Anu's  
17 name on the account, and I would see Ronica's name on that  
18 account as well.

19 THE COURT: Counsel, can we get a little clarification  
20 here?

21 MS. TUMARINO: This is the joint account that was held  
22 between --

23 THE COURT: Right. I think it is.

24 MS. TUMARINO: Doesn't have the same account --

25 THE COURT: You know what, we'll move faster if

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N. Sethi - cross

1 counsel pops up and tells the witness it's the same number.

2 MR. ALLOY: I direct your attention to page D000084.

3 Does that refresh your recollection that the account number of  
4 the joint account with Ronica Sethi and Anu Upadhyay is the  
5 same account number as D000075, which is just in Ronica Sethi's  
6 name for that month?

7 THE WITNESS: Yes. Yes, it does.

8 THE COURT: Thank you.

9 Q. You stopped keeping the spreadsheet at the end of May of  
10 2007, is that correct?

11 A. That's correct. That's the last time I made any changes to  
12 it.

13 Q. When Shaku filed the lawsuit against the Chellarams, did  
14 you have a conversation with the Chellarams about it?

15 A. Me personally, no.

16 Q. You state that Ms. Upadhyay brought up the lawsuit with you  
17 on numerous occasions, is that right?

18 A. That is correct.

19 Q. And when did she bring it up with you?

20 A. She would bring it up when she was giving me a massage.

21 Q. When she was what?

22 A. Giving me a massage.

23 Q. And approximately when was this?

24 A. I don't remember the exact dates.

25 Q. Was she working for you at the time? Was she living and



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N. Sethi - cross

1 working for you at the time?

2 A. I don't think so.

3 Q. And what did you discuss about the lawsuit?

4 A. Oh, she told me, you know, what Shaku had done was so  
5 wrong, that it was a false claim, and she even mentioned that  
6 when the claim had settled, Shaku had gotten I think a  
7 settlement of about \$90,000, I think approximately, she said  
8 90,000, (Hindi) is the word she used. 90,000. And she didn't  
9 agree with what Shaku was doing.

10 Q. What did you agree to pay Ms. Upadhyay when she first came  
11 to work for you in December of 1998?

12 A. We agreed to pay her a thousand dollars.

13 Q. How often?

14 A. A month.

15 Q. The checks you sent to India for Ms. Upadhyay's family that  
16 were intended as her wages, did you personally write out those  
17 checks?

18 A. Absolutely.

19 Q. All of them?

20 A. All of them.

21 Q. And to whom were the checks made payable?

22 A. They were either made to her son Ashok Upadhyay, or her  
23 husband, Kashi Prasad Upadhyay. Because that was the only two  
24 names that was on the piece of paper.

25 Q. And how did you determine to whom the checks would be made

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N. Sethi - cross

1 payable?

2 A. She would tell me when to send the checks and to whom to  
3 send the checks.

4 Q. Did you show these checks to Ms. Upadhyay?

5 A. Absolutely. I would show her exactly what I was sending as  
6 a check and I would show her the corresponding entry in the  
7 ledger as well.

8 Q. Did you give Ms. Upadhyay a copy of the ledger?

9 A. She had access to the ledger. She could see it any time  
10 she wanted to, and there were many times she asked to see it.  
11 Because she wanted to know how much balance she had because  
12 that's how she knew how much money she could send to India.

13 Q. The balance was what she was owed at any given time?

14 A. Yes, that was what the remaining balance was that she asked  
15 us to keep for her. Because any time you offered to pay her  
16 cash she would not accept that. She said I don't know what to  
17 do with it, I don't know where to keep it, I don't have a bank  
18 account.

19 Q. She would not accept cash from you?

20 A. There were some times when she accepted cash. I remember  
21 very clearly when her salary was raised to 1200 shortly after  
22 she started for us, she said her plan was to send every three  
23 months or so the money and sometimes she would ask in the  
24 middle of the month for the weekend she would say give me some  
25 money. I would say how much do you want. Sometimes 200,

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N. Sethi - cross

1 sometimes 300. Whatever she wanted I would give her.

2 Q. And then you kept track of how much she was, she had left  
3 to be paid in the ledger?

4 A. Absolutely. There's a running balance.

5 Q. You corresponded with Ms. Upadhyay's son by e-mail when it  
6 came to transferring money to their accounts, correct?

7 A. My wife did.

8 Q. You didn't correspond with him by e-mail?

9 A. In some cases, the last transfer my wife did. In some  
10 original cases yes, I did. I remember very clearly because he  
11 even sent me his resume.

12 Q. When was the correspondence that you had with him by  
13 e-mail?

14 A. From 2001, 2002, if I remember correctly.

15 Q. You were working at Predictive Systems at this time?

16 A. In 2001 to 2002 I was not working, actually. I left  
17 Predictive Systems in April of 2001. Rejoined them in May,  
18 June of 2002.

19 Q. So you e-mailed with him in 2001 and 2002, is that what you  
20 said?

21 A. I believe so.

22 Q. And you were not working at all at this time?

23 A. In 2001 from March -- April 1, 2001 I did not work, that is  
24 correct. I was only doing some independent consulting.

25 Q. And it was in these e-mails that he sent to you in 2001 to

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N. Sethi - cross

1 2002, he asked you to transfer money to his account?

2 A. I think it was 2001-2002 or could be even later, but  
3 definitely he send me bank account information and he asked me  
4 to send wires to them because the checks were taking a very  
5 long time to clear.

6 Q. So he requested that you switch to sending wire transfers?

7 A. That is correct, and I would explain to Anu that the wires  
8 would be a lot more expensive, it would cost approximately 25  
9 to \$50, I don't remember which one, it was either 25 to 50 to  
10 send a wire.

11 Q. And who paid for the costs associated with sending money by  
12 wire transfer?

13 A. I did.

14 Q. It didn't come out of Ms. Upadhyay's wages?

15 A. No, it did not. She did so much for us. She was taking  
16 care of our most precious assets, our children.

17 Q. In this time of 2001 through 2002 did he also correspond  
18 with Ronica by e-mail, do you know?

19 A. I don't know.

20 Q. And do you still have the e-mails that Ashok sent you in  
21 2001 and 2002 about wire transfers?

22 A. I think I put it in my affidavit, I do not. Because those  
23 are different e-mail addresses that I don't have access to  
24 anymore.

25 Q. Why don't you have access to them anymore?

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N. Sethi - cross

1 A. Because a lot of times the company, either the company I  
2 was working for, the company changes, you can't access those or  
3 if your cable provider changes, which has happened multiple of  
4 time, you lose connectivity, your e-mail address goes and they  
5 give you a new one whoever takes it over. I remember we had a  
6 connection RCN which was taken over by Comcast, which we  
7 decided to change to FIOS, three different e-mail addresses.  
8 At that time I decided to move to an independent e-mail address  
9 of Yahoo which I don't have to worry about changing. Because  
10 in New York City we had an e-mail address of Time Warner. I'm  
11 trying to remember correctly, that was Time Warner New York  
12 City who was the cable provider.

13 Q. You testified that when Ashok wrote to you in 2001 to 2002,  
14 you weren't working at the time, is that right?

15 A. I'm sorry, say that again?

16 MS. McKENNA: We just went through this, your Honor.

17 MS. TUMARINO: I'm just clarifying.

18 Q. You testified you weren't working when Ashok e-mailed you  
19 in 2001 to 2002?

20 A. I did not say that. I said I did not work from April 2001  
21 to about May, June of 2002 is what I said.

22 Q. And it was during that period --

23 A. I didn't say that. I said Ashok first sent me an e-mail  
24 around 2001, maybe 2002. I'm not sure exactly when.

25 Q. Do you know what account he sent it to?

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N. Sethi - cross

1 A. I'm sorry?

2 Q. Do you know what account he sent these e-mails to?

3 A. I don't know. So long back.

4 Q. You said in your affidavit that when one of Ms. Upadhyay's  
5 sons went to prison she asked for money to be sent to India to  
6 bail him out. Did she ask you personally?

7 A. Yes.

8 Q. And did you send money?

9 A. Absolutely.

10 Q. Were those her wages?

11 A. Absolutely.

12 Q. Do you recall how much you sent?

13 A. I don't.

14 Q. She also told you that her family was rebuilding a house  
15 that was damaged and she needed money. Did she ask you  
16 personally to send money?

17 A. Yes. Every time I send money to her husband or her son was  
18 only upon her request.

19 Q. And so in that specific instance when her house was damaged  
20 she personally asked you to send money?

21 A. That is correct.

22 THE COURT: I think there's confusion. Is it that he  
23 is sending her wages her that he is making a personal  
24 contribution to the repair of the house?

25 BY MS. TUMARINO:

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N. Sethi - cross

1 Q. These are her wages, correct?

2 A. Only her wages.

3 Q. But she personally asked you to send the money?

4 A. That is correct.

5 Q. Do you remember the amount you sent?

6 A. So far back, I don't.

7 Q. Just to be clear, can you turn to Defendant's Exhibit 11?

8 A. Yes.

9 Q. This is an e-mail sent first to Ronica and then forwarded  
10 to you, correct?

11 A. That is correct.

12 Q. And it's from Ashok, the plaintiff's son?

13 A. That is correct.

14 Q. Asking that money be wired into an account for plaintiff in  
15 India with Citibank?

16 A. That is correct.

17 Q. So this is not an e-mail about transferring money to the  
18 plaintiff's family, correct?

19 A. This was the final balance transfer for Anu Upadhyay's  
20 account.

21 Q. You had two titles with Predictive Systems, correct?

22 A. That is correct.

23 Q. And from 1995 to 2001 you were the vice president of  
24 finance, right?

25 A. That is correct.

C52FUPAH

N. Sethi - cross

1 Q. And what was the size of Predictive Systems at that time?

2 A. From '95 to 2001. In 2001 we were probably at our peak.

3 We did about \$80 million in revenues. In 2000 and 2001 we did  
4 about \$80 million in revenues.

5 Q. \$8 million in revenues?

6 A. 80. Eight-zero.

7 Q. And how many employees?

8 A. We had over 700 employees in over eight offices in the U.S.  
9 and three international offices.

10 Q. And from 2002 to 2003 were there approximately the same  
11 number of employees in offices?

12 A. No. The number of offices were the same, but the number of  
13 employees were being reduced dramatically.

14 Q. And when you were vice president of finance, you were  
15 responsible for overseeing accounting finance and human  
16 resources functions of the company, is that right?

17 A. That is correct.

18 Q. And how many people worked in the accounting department?

19 A. About eleven.

20 Q. And in the finance department?

21 A. That's the finance and accounting is the same.

22 Q. Same department.

23 A. And the human resources department. We had about two  
24 people in human resources and we had about six recruiters which  
25 was also part of human resources.



C52FUPAH

N. Sethi - cross

1 Q. So eight?

2 A. Yes.

3 Q. And what were the titles of the, other than the recruiters,  
4 the title of the two other people in human resources?

5 MS. McKENNA: Objection.

6 THE COURT: Aren't you going a little far afield here?

7 Q. Is it your testimony, Mr. Sethi, that you were personally  
8 responsible for insuring that all of the company's offices had  
9 the relevant wage hour posters?

10 A. That is correct.

11 Q. And in that capacity you were personally responsible for  
12 seeing to it that they were installed somewhere on the walls?

13 A. That is correct.

14 Q. And that was your responsibility as vice president of  
15 finance and as the chief financial officer of Predictive  
16 Systems?

17 A. That is correct.

18 Q. Where were the eight offices?

19 MS. McKENNA: Objection.

20 THE COURT: Sustained.

21 Q. Was it an international company, Predictive Systems?

22 MS. McKENNA: Objection.

23 THE COURT: Sustained.

24 MS. TUMARINO: If I could just have a minute, I think  
25 I might be done.

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N. Sethi - cross

1 (Pause)

2 MS. TUMARINO: I have a few additional questions.

3 Q. In your affidavit you mention that your wife Ronica and  
4 yourself undertook an extensive review and analysis of Anu's  
5 bank records in June 2007. Is that right?

6 A. We have a time frame wrong. What we did was '06 we started  
7 it and we ended that analysis in May of '07.

8 Q. When in 2006 did you start?

9 A. I think it's about March, April time frame.

10 Q. And why did you do this analysis?

11 A. Because, I think we just went over this. Anu asked why, to  
12 check to see if all the checks that she had gotten from Shikha  
13 were deposited, if she had been paid all the money Shikha owed  
14 her on an annual basis were there and I told her all I can do  
15 is verify the checks, I can't account for any cash that was  
16 given to you or for any wire transfers that Shikha may have  
17 made on your behalf. All I can account for is all the checks.

18 Q. So she asked you sometime in March or April of 2006 to make  
19 an accounting for checks from Shikha?

20 A. She started complaining, she said I don't think I received  
21 all the money from Shikha. There's some money she felt she was  
22 missing, I think it was in the six to \$8,000 range and she said  
23 can you help me out with this, so I sent my wife to the bank.  
24 That's how my wife was involved. She helped me get all the  
25 bank statements, we paid \$5 per statement for each Sovereign

C52FUPAH

N. Sethi - cross

1 Bank statement we had to get reprinted. We even got some of  
2 the Chase Bank statements and then I created the spreadsheet we  
3 went through.

4 MS. McKENNA: Your Honor, we went through this  
5 testimony at great length. At this hour I don't know what  
6 we're doing here.

7 Q. When did you first show this spreadsheet to plaintiff?

8 A. I showed it to the plaintiff I think in the fall. I also  
9 showed it --

10 Q. In the fall of 2006?

11 A. Of '06. I also gave her a copy with all the bank  
12 statements sometime in '07. I think this is probably after I  
13 finished the analysis, it was probably June of '07 when I gave  
14 her all the back statements and the spreadsheet, because that  
15 would have been when I completed the analysis.

16 Q. You state in your affidavit, paragraph 14, that there's a  
17 time stamp on your analysis that shows you performed the  
18 analysis and reconciliation of payments to Anu on May 30, 2007.

19 MS. McKENNA: We've already questioned the witness  
20 about this date, your Honor. We went through this. Why is the  
21 box checked, why is not the box checked. It is now ten to six,  
22 your Honor. I don't know what we're accomplishing.

23 Q. Do you remember what day of the week it was when you showed  
24 this to Anu?

25 MS. McKENNA: Objection.

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N. Sethi - cross

1 THE COURT: Yes. Sustained. Come on.

2 Q. Is the basis of your conclusion that Ms. Upadhyay could add  
3 and subtract the fact that she would bring change home from the  
4 grocery store?

5 A. More than that. She would also count, because there were  
6 times she asked for money I gave her money and she counted it.

7 Q. A child learns to count before they learn to add and  
8 subtract, isn't that right?

9 A. I don't know.

10 Q. You say for someone who allegedly cannot read and write she  
11 was still able to maintain a phone book.

12 A. That is correct.

13 Q. Anu can write numbers, correct?

14 A. She can also write letters. Also in her testimony earlier  
15 today, or yesterday, she spoke a lot of English words in her  
16 testimony. Words like "confused," words like "left" and  
17 "right," words like "different," and there were a lot more.  
18 And also in that testimony she would answer the questions  
19 before the interpreter finished.

20 Q. You say in your affidavit that over the telephone Shikha  
21 provided you with all her employment pay records from the time  
22 that Anu worked with them, is that correct?

23 A. Can you read that for me, please?

24 THE COURT: Which affidavit are you referring to? And  
25 which paragraph.

C52FUPAH

N. Sethi - cross

1 Q. The first paragraph 14. There are two paragraph 14's in  
2 the April 16, 2012 affidavit. The first paragraph 14 towards  
3 the bottom of page 6. "Shikha provided us by phone with their  
4 employment rate pay records to Anu, month by month paychecks,  
5 transfers, etc., which we then compared to the bank statements  
6 showing the deposits of those checks."

7 A. That is correct.

8 Q. Did this conversation take place during one of Anu's visits  
9 to you? The phone conversation with Shikha.

10 A. I don't believe so. It was during when we were doing the  
11 analysis.

12 Q. And so you got all of the records from Shikha over the  
13 phone?

14 A. Yeah. I wanted to know what checks. I just wanted to make  
15 sure what checks did she write so I could correspondingly make  
16 sure those checks were deposited.

17 Q. How long was that phone call?

18 A. I don't remember.

19 MS. McKENNA: Objection.

20 THE COURT: Sustained.

21 MS. TUMARINO: I don't have anything further. I do  
22 have some objections to hearsay argument in the affidavit which  
23 I should make now before the witness is excused.

24 THE COURT: Sure.

25 MS. TUMARINO: Paragraph 2 is irrelevant.

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N. Sethi - cross

1 MS. McKENNA: Which affidavit?

2 MS. TUMARINO: I'm using the April 16, 2012 affidavit.

3 MR. ALLOY: You're saying all of paragraph 2 is  
4 irrelevant?

5 MS. TUMARINO: It's irrelevant to the issue of  
6 tolling.

7 THE COURT: You asked about when she first came to  
8 work, so you asked questions about this so I'm not going to  
9 strike it.

10 MS. TUMARINO: The first sentence of paragraph 3 is  
11 argument.

12 MS. McKENNA: Earlier, your Honor, you with respect to  
13 the plaintiff when I objected to a similar question said it's  
14 the equivalent of in the plaintiff's case, I forget if it was a  
15 yes or a no and I think this is an equivalent of a denial of  
16 what's being referred to in the plaintiff's affidavit. Not  
17 affidavit. Plaintiff's statement.

18 THE COURT: I recognize how it's phrased, but the  
19 bottom line is, and we can clarify it and just ask did you get  
20 the --

21 MS. McKENNA: Your Honor, he testified to it, your  
22 Honor.

23 THE COURT: Then that's it. There's nothing to --  
24 this is a waste of time.

25 MS. TUMARINO: The last sentence of paragraph 3 is

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N. Sethi - cross

1 hearsay.

2 MS. McKENNA: Counsel asked questions about this  
3 herself on cross-examination. She's waived any objection to  
4 that.

5 MS. TUMARINO: Not with respect to Ashok's e-mails to  
6 Shikha and Ganesh.

7 MS. McKENNA: Yes, you did. Oh, not Ganesh. He says  
8 I know it, so that's not hearsay either, by the by.

9 THE COURT: Overruled. Go ahead.

10 MS. TUMARINO: The last sentence of paragraph 7 is  
11 argument.

12 MS. McKENNA: I don't think that's argument at all,  
13 your Honor. It's an explanation.

14 THE COURT: It's an argument that anyone can make,  
15 whether it's here or not. So let's just go on.

16 MS. TUMARINO: Paragraph 17. We object to the first  
17 sentence on the grounds of relevance and opinion.

18 MS. McKENNA: It's the predicate for what follows,  
19 your Honor.

20 MS. TUMARINO: It's also speculation. Same thing with  
21 the second sentence.

22 MS. McKENNA: It's an opinion. Second sentence  
23 doesn't say it's speculation. It states a fact. The witness's  
24 knowledge --

25 MS. TUMARINO: I'm sorry, the third sentence, "With

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1 the financial crisis of 2008 I believe her massage business may  
2 have dried up as well."

3 THE COURT: Let's just do it this way. Did Anu  
4 explain to you or give you a reason for asking to resume  
5 working for you in early 2008?

6 THE WITNESS: Yes. She was having a hard time  
7 maintaining a job. She was working for a family in Hillsboro  
8 that didn't last more than two months. She actually came to us  
9 and asked us if she could work for us. I said there's no more  
10 work for us, our children are older. You're welcome to stay  
11 with us, but we can't pay you. We opened our home to her  
12 because she was like family.

13 THE COURT: My question was did she explain to you the  
14 reason that she wanted to come back to work for you?

15 THE WITNESS: She was definitely --

16 THE COURT: Let me ask you. Did she tell you about  
17 the family in Hillsboro?

18 THE WITNESS: I actually picked her up from a common  
19 place. She called me from the family. I was a reference for  
20 that family. I picked her up from a meeting place between  
21 Hillsboro and Princeton because they're very close to each  
22 other.

23 THE COURT: Did she tell you that the job for the  
24 family in Hillsboro had ended?

25 THE WITNESS: No, she didn't say that, but she wasn't



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N. Sethi - cross

1 comfortable with the job. And with the Hillsboro job she said  
2 her massages were not being as well, too.

3 THE COURT: Motion denied.

4 MS. TUMARINO: The last two sentences of paragraph 17  
5 are argument.

6 THE COURT: I understand that to be argument, but I'm  
7 not striking it.

8 MS. TUMARINO: I have nothing further, your Honor.

9 THE COURT: Okay.

10 MR. ALLOY: I have just two very quick questions, your  
11 Honor, I'll be very quick.

12 REDIRECT EXAMINATION

13 BY MR. ALLOY:

14 Q. What language do you speak to your children?

15 A. English.

16 Q. What language does your wife speak to her children?

17 A. English.

18 THE COURT: What language do your children speak to  
19 each other?

20 THE WITNESS: English.

21 MR. ALLOY: This is Exhibit 25.

22 Q. Before yesterday, prior to yesterday, had you ever seen --  
23 that's a picture of Nahar Alam.

24 MS. TUMARINO: Your Honor, I'm going to object. This  
25 is beyond the scope of my cross.

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N. Sethi - redirect

1 MR. ALLOY: Well, this is in response to certain  
2 direct affidavits that were put in by plaintiff which obviously  
3 we didn't have an opportunity to address.

4 THE COURT: Go ahead, just ask the question.

5 Q. Prior to yesterday's appearance in court have you ever seen  
6 Nahar Alam in your life?

7 A. Never.

8 Q. Was she ever in your apartment in New York City?

9 A. Never.

10 MR. ALLOY: That's it. Thank you.

11 THE COURT: We need to end. What I would suggest is  
12 that counsel confer about a date at which plaintiff's witness  
13 can return and Ronica Sethi is available, and if you call in to  
14 Andrew and give us some alternatives we'll let you know if they  
15 work for us.

16 MS. McKENNA: Thank you, your Honor.

17 MR. ALLOY: Thank you, your Honor.

18 THE COURT: You are excused, and so is the court  
19 reporter, who has done yeoman work. She'll have stories to  
20 tell.

21 (Adjourned sine die)  
22  
23  
24  
25

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